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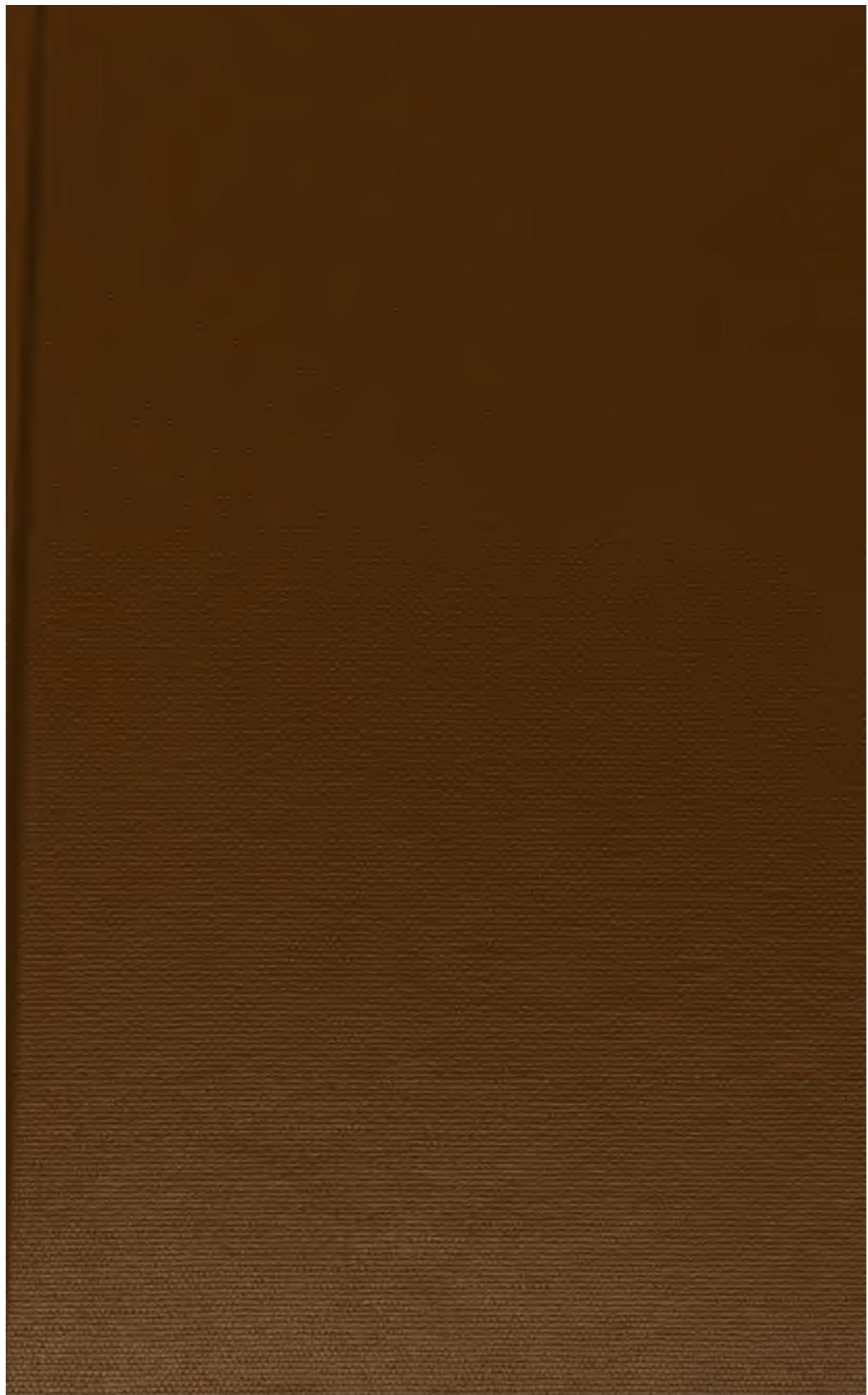
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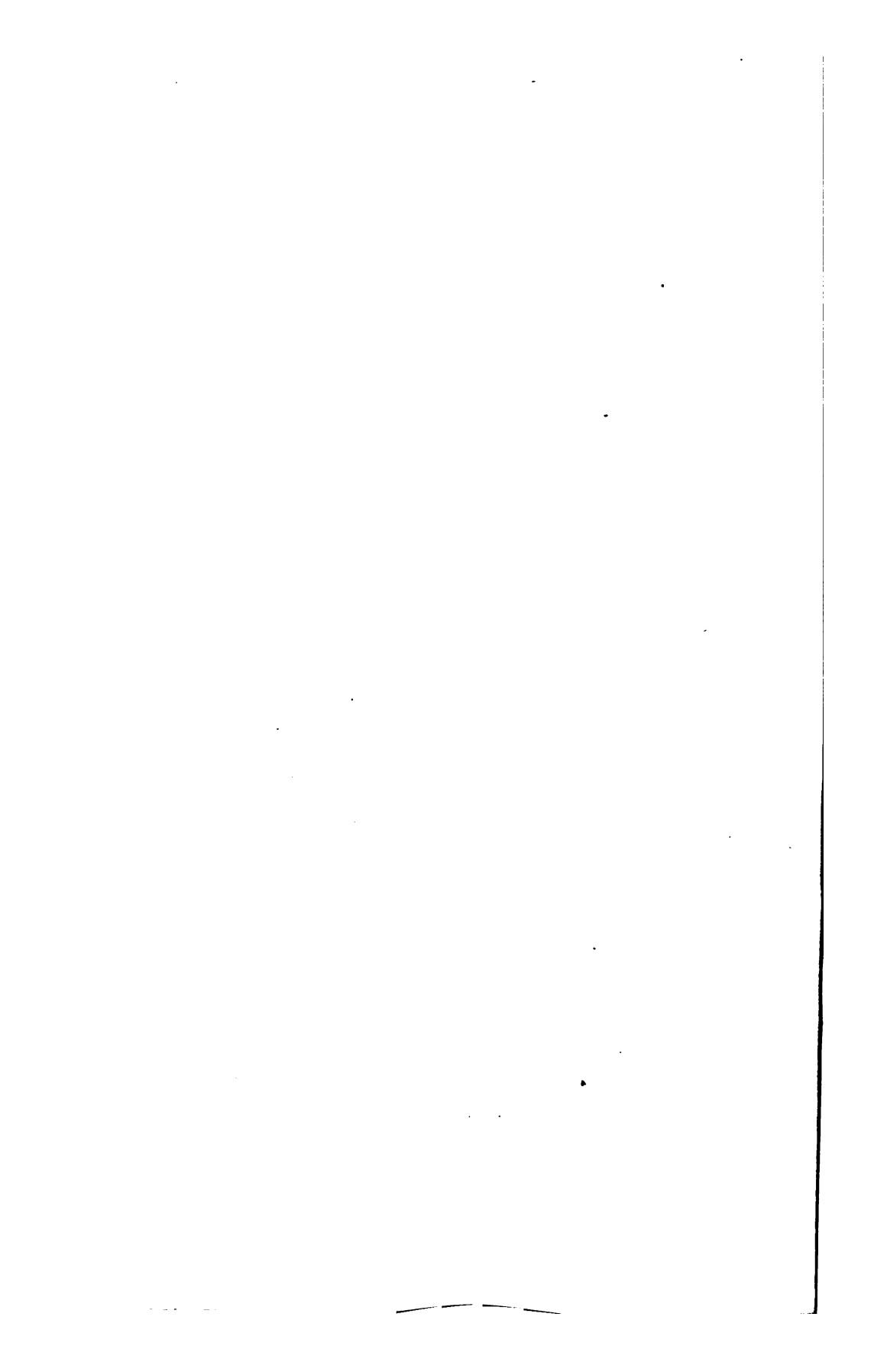












The Law  
OF  
CRIMINAL CONSPIRACIES  
AND  
AGREEMENTS.

AND

BY

R. S. WRIGHT,  
OF THE INNER TEMPLE, BARRISTER AT LAW,  
FELLOW OF ORIEL COLL., OXFORD.

"Rather to . . . than . . . by unprofitable subtlety, which corrupteth the  
sense of law, to reconcile contrarieties."—*Lord Bacon's Elements, Pref.*

TO WHICH IS ADDED

THE LAW OF CRIMINAL CONSPIRACIES AND AGREEMENTS  
AS FOUND IN  
THE AMERICAN CASES.

BY

HAMPTON L. CARSON, ESQ.,  
OF THE PHILADELPHIA BAR.

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(4686)

# Conspiracies and Agreements.

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## SECTION I.

### GENERAL HISTORY OF THE LAW OF CRIMINAL COMBINATIONS.

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#### *Preliminary Notes.*

[1. REFERENCES to the cases on conspiracy are made in the text by date and name, without the addition of the books in which the cases are reported. A chronological list of cases will be found in Appendix III.; and also an alphabetical list with the references. Some important cases are set out in full or in part in Appendix II.

2. The word "ruled," as applied to a proposition of law for which a case is cited, is used to signify that the proposition was laid down by a judge acting on assize, or under a special commission, or at nisi prius, or at the Central Criminal Court, or at sessions. The word "held" is used to signify that the proposition was laid down by a judge or judges acting in banc or in a court of appeal.]

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#### *§ 1. General History of Criminal Combinations.*

The history of the law of criminal conspiracies and combinations may be conveniently divided into three periods, of which the first ends with the sixteenth, and the second with the eighteenth century.

[1200—1600.] There appears to be no evidence that, during the first of these periods, any other crime of conspiracy or combination was known to the common law than that which was authoritatively and "finally" defined in A. D. 1305 by the Ordinance of Conspirators, 33 Edw. 1., as consisting in confederacy or alliance for the false and malicious promotion of indictments and pleas, or for em-

bracery or maintenance of various kinds. During the reigns from that of Edward III. to the end of that of Elizabeth, various statutes were directed against combinations for treasonable purposes or for breaches of the peace, against combinations by merchants to disturb the markets or prices, and against combinations by masons and carpenters, by victuallers to raise prices, and by labourers to raise wages or alter hours; but no mention has been found in any of the writers, reports or abridgments of the period before the 17th century of any kind of conspiracy, confederation or combination, as being criminal at common law, except the crime of conspiracy as defined by the ordinance of 1305. The process by which this specific offence has been expanded into the comprehensive title of conspiracy or combination in the modern criminal law is now to be traced.

[1600—1800.] The modern law of conspiracy has grown out of the application to cases of conspiracy, properly so called and as defined by the 33 Edw. 1, of the early doctrine that since the gist of crime was in the intent, a criminal intent manifested by any act done in furtherance of it might be punishable, although the act did not amount in law to an actual attempt. (Cp. by Mr. Greaves, in Cox's C. L. Cons. Acts, p. lxxxiv.) In accordance with this view it was determined in 1354 (Anon.), and again in 1574 (Sydenham), and finally settled on the authority of the former of those cases by the Star Chamber in 1611 (Poulterers' Case), that although the crime of conspiracy, properly so called, was not complete unless in a case of conspiracy for maintenance some suit had been actually maintained, or in a case of conspiracy for false and malicious indictment the party against whom the conspiracy was directed had been actually indicted and acquitted, yet the agreement for such a conspiracy was indictable as a substantive offence, since there was a criminal intent manifested by an act done in furtherance of it, viz., by the agreement: and from this time, by an easy transition, the agreement or confederacy itself for the commission of conspiracy came to be regarded as a complete act of conspiracy, although traces of the original distinction between a completed conspiracy and the mere agreement or confederacy to commit it long continue to be found. (1699. Savile v. Roberts: 1705. Best: 1811. Turner.) Moreover, since in the Poulterers' Case nothing had been done which amounted to a complete crime under the statute, it followed that the criminality of the agreement must be in some sense a criminality by common law; and Lord Coke's observations on this point in his report of that case soon received an extended application, and grew into a rule that a combination to commit or to procure the commission of any crime was criminal and might be prosecuted as a conspiracy, although the crime might have nothing to do with the crime of conspiracy properly so called. The first indication of this doctrine in a text book is to be found in the insertion in those editions of the "Termes

de la Ley" (a), which were published after the report of the Poulterers' Case, of a generalized paraphrase of that case. It is mentioned in 1665 (in Starling's Case) that there were precedents for informations in the Exchequer for conspiracies to commit offences relating to the revenue; and during the reign of Charles II. and the two following reigns the tendency towards the general establishment of the doctrine appears in the practice of inserting by way of aggravation (see by counsel for the crown in 1697. Thorp) in the inducements of indictments or informations for misdemeanors, the words "*conspiratione inter eos habita*," or "*per conspirationem*," or "*conspirantes*," or "*conspirans*" or "*machinantes et aggregantes*," especially in cases of cheats. Instances of this practice will be found in 1674 (Thody), 1682 (Lord Grey), and 1697 (Thorp; see the argument of the counsel for the crown); and in some cases (see 1685. Salter: 1704. Orbell) this seems to have been done, in conformity with the practice in civil actions on the case (1 Wms. S. 229 b, n. 4), even where the whole frame of the indictment was confined to a single defendant. The convenience of this mode of procedure in permitting the conviction of persons without proof of a complete crime had already been proved in indictments for treason (1600. Blunt: 1680. Stafford: 1683. Russell), and seems to have completely established the practice in the reign of George I.

The principal share in the earlier stages of this process must be ascribed to the Star Chamber. The jurisdiction of that court was, by the 3 Hen. 7, c. 1, specially extended to the punishment of "unlawful maintenances, giving of liveries, signs and tokens, and retainers by indentures, promises, oaths, writings, or otherwise embraceries of [the king's] subjects, untrue demeanings of sheriffs in making of panels, and other untrue returns, by taking of money by juries (b); by great riots and unlawful assemblies;" in other words, to the subjects of the ordinances of conspirators and of the statutes of riot; and not only the Poulterers' Case, which is the source of all the modern law of conspiracy, but all the other reported cases of conspiracy decided before the abolition of the Star Chamber in 1640 (16 Ch. 1, c. 10), were in that court.

In the meantime the general criminal law had received great

(a) 1629, 1641, &c. The passage does not appear in the edition of 1579. In the edition of 1629 it is marked as new matter.

(b) There is a curious error in the print in Pulton (f. 24 b) of this portion of the act 3 Hen. 7, c. 1. The act runs (as above) "by taking of money by *juries*" (i. e. embraceries), or in the French of the statutes of the realm—"pruise dargent par jurrez." This Pulton prints "by taking of money, by *injuries*, &c." Coke, in 4 Inst. 62, in his account of the jurisdiction of the Star Chamber, prints the words in the same way as Pulton, and he appends a comment on the "large word" injuries. The 4th Inst. was not published till the year after the abolition of the Star Chamber; but Pulton was a great authority, and Coke long acted as a judge in that court upon this reading of the statute—an error which may have had political as well as legal consequences.

extensions, first at the hands of the Star Chamber (*c.*), next from the Court of Exchequer, which, by the 33 Hen. 8, c. 39, had authority to punish at its discretion all trespasses, deceits, negligences, defaults, contempts, offences and other things wherein the king should be only party, and lastly and more permanently from the King's Bench. That court, in 1616 (Bagg's Case), asserted itself as a rival of the Star Chamber by resolving that "to this court belongs authority not only to correct errors in judicial proceedings, but other errors and misdemeanors extra-judicial, tending to the breach of the peace or oppression of the subjects, or to the raising of faction, controversy or debate, or to any manner of misgovernment; so that no wrong or injury either publick or private can be done, but that it shall be reformed or punished in due course of law." "Although," Sir C. Sedley was told in 1664 (1 Sid. 168) "there was not now a Star Chamber, still they would have him know that this court is *custos morum* of all the subjects of the king." "Whatever" said Lord Mansfield, in 1773 (Jones *v.* Randall, Lofft. 383), "is *contra bonos mores et decorum*, the principles of our law prohibit, and the king's court, as the general censor and guardian of the public manners, is bound to restrain and punish." The procedure by indictment for conspiracy was during the 18th century applied to combinations for a great variety of purposes made criminal by these principles. It is next to be seen how, in certain cases after the ordinary criminal law receded from a portion of the wide area over which it had thus claimed jurisdiction during the 17th century, the law of conspiracy continued to be applied to combinations for purposes which had ceased to be criminal by the ordinary law.

Throughout the 17th century the question most frequently agitated was, whether as between the mere combination for criminal acts on the one hand, and the execution of the proposed acts on the other hand the gist of the crime lay in such a combination or included the execution of the acts proposed. This was material for determining how far the proposed acts must be fully and correctly set out in the indictment, how far the combination must be proved to have been carried towards execution, and whether a court which would not have had jurisdiction to punish the acts themselves might punish the combination, and whether, in cases in which the proposed acts were prohibited by statute, the offence must be laid to be *contra formam statuti*. In the course of the 17th century it became settled law that as between the combination to do the criminal acts and the acts themselves, the gist was in the agreement or combination, for all the above-mentioned purposes; and that even where the proposed acts were statutory offences, the

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(c) A case is reported in which this court punished the prosecutor as well as the prisoner. (Moore, 761.) "*Quod raro est experience devani,*" says the reporter.

conspiracy to do them might be laid and punished as a substantive crime at common law; and it became the current phrase that the conspiracy was the "gist of the indictment." (1663. Timberley : 1678. Armstrong : 1705. Best: 1719. Kinnersley.) This phrase, which at first expressed scarcely more than a rule of pleading, evidence, or jurisdiction, soon began to be quoted for a different object. During the 17th and the earlier part of the 18th centuries the law of cheats was still unsettled, and numerous cases are to be found in which cheats not of a public nature and not within the statute of false tokens (33 Hen. 8, c. 1) were held indictable; so that Hawkins, writing in 1716, defined the crime of cheating to consist in "deceitful practices in defrauding or endeavouring to defraud another of his known right by means of some artful device contrary to the plain rules of common honesty;" and several cases of such cheats had been prosecuted by way of conspiracy. But in 1720 (Wilders, cited in 2 Burr. at 1128) it was held that private unfair dealings, such as the fraud of a brewer in selling to a publican casks of beer untruly marked as to their measure, were not indictable; and the same view was taken by the King's Bench in 1730 (Bryan) in the case of a false pretence; and finally settled in 1761 (Wheatley). The same cases however which determined that such cheats were not indictable in an individual, reserved their criminality in cases of conspiracy. Different grounds are stated for this reservation. The judges are made to put it in some cases on the ground that the combination makes the cheat public; in others (1761. Wheatley), on the ground that common prudence cannot guard against combination to defraud. Whatever may be the true ground of the doctrine, it has been found too beneficial to be questioned; and it has long been established law that a combination to defraud may be criminal, although the proposed deceit is not such as would be criminal apart from the combination.

Next a suggestion of a general doctrine that a combination may be criminal, although that which it proposes would not be criminal apart from combination, begins to appear in the arguments of counsel towards the close of the 17th century. In 1665 (Starling) it had been held that a conviction for a combination to "depauperate" the farmers of excise was good, because the indictment set forth that the excise was settled, on the king as a part of his revenue, and the depauperation of the farmers of excise would prevent them from rendering him that revenue. In the argument in Thorp's Case (1697) as reported in Keble, Starling's Case seems to have been cited by counsel as an authority for a general doctrine of the kind above stated; but no judgment was given in this case. The doctrine seems to have been repudiated in 1704 (Daniell) by Lord Holt, who explained the exceptional ground of Starling's Case, namely, that there the combination "was directly of a public nature and levelled at the government;" and it seems not even to have been suggested in argument in Best's Case (1705). But in

1717 Hawkins' Pleas of the Crown was published, and in that work (i. 72, 2) it was stated that "there can be no doubt but that all confederacies whatsoever wrongfully to prejudice a third person, are highly criminal at common law;"—a proposition to which, unless by "wrongfully" he meant by criminal means, the authorities cited by him (*d*), with the exception of the argument of counsel as reported in Keble, furnish little or no support. But from this time expressions of a similar kind begin to appear occasionally in judgments, and by the end of the 18th century an impression appears to have grown up amongst lawyers, which can only be described by the double proposition that a combination to do an unlawful act is criminal, and that in this phrase "unlawful" does not necessarily mean "criminal." The consideration of the meaning, grounds and correctness of this doctrine must be deferred to a future section.

[1800—1872.] The most prominent characteristic of the law of criminal combinations in the present century is its extended application to combinations of workmen. Acts had in former times been passed to prohibit combinations of workmen for altering wages or hours (2 & 3 Edw. 6, c. 15), and during the 18th century several acts had prohibited combinations for controlling masters in particular trades. In 1799, the Act of 39 Geo. 3, c. 81, by sect. 1, provided that all agreements by workmen of any kind for altering hours or lessening quantity of work, or for hindering masters from employing such persons as they should please, or for controlling or in any way affecting a master in the conduct or management of his business should be "and the same are hereby declared to be illegal, null and void" to all intents; and by subsequent sections it provided that workmen entering into such agreements, or subscribing or collecting money, or attending meetings for the purpose of such agreements, or bribing, persuading or influencing other workmen not to enter into hirings, or to quit their hirings, or refusing to work with any other workmen, &c., should be subject to imprisonment. In the following year this act was repealed and replaced by the 39 & 40 Geo. 3, c. 106, which contained provisions substantially similar to those of the Act of 1799, but which required in the case of some of the offences that the acts must be wilfully and maliciously done. In 1824 the Act of 5 Geo. 4, c. 95, repealed all the then existing acts relating to combinations of workmen, and provided that workmen should not by reason of combinations as to hours, wages or conditions of labour, or for inducing others to refuse work or to depart from work, or for regulating "the mode of carrying on any manufacture, trade or business or the management thereof," be liable to any criminal proceeding or

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(*d*) 1354. Art. of Inq.; 1607. Lord Gray of Groby; 1611. Poulterers' Case; 1663. Timberley; 1665. Starling; 1678. Armstrong; 1699. Savile *v.* Roberts; 1705. Best. The latter editors add—1719. Cope; 1721. Tailors of Cambridge; 1725. Edwards; 1793. The Prisoner's Case.

punishment for conspiracy or otherwise under the statute or common law. By another section it extended a similar immunity to combinations of masters. On the other hand it enacted a penalty of two months' imprisonment for violence, threats, intimidation and malicious mischief. It was repealed after a year's trial, and was replaced by the 6 Geo. 4, c. 129, A. D. 1825, which continued in force until 1871. This act again repealed the older statutes, but without mention of common law. It provided summary penalties for the use of violence, threats, intimidation, molestation or obstruction by any person for the purpose of forcing a master to alter his mode of business, or a workman to refuse or leave work, or of forcing any person to belong or subscribe or to conform to the rules of any club or association. It did not expressly penalize any combination or conspiracy, and it exempted from all liability to punishment the mere meeting of masters or workmen for settling the conditions as to wages and hours on which the persons present at the meeting would consent to employ or serve. In 1859 an amending act was passed (22 Vict. c. 34) for declaring that agreements by workmen or others as to the wages or hours of work, whether of the persons present at the meeting or of other workmen, and peaceable and reasonable persuasions by workmen or others to abstain from work in order to secure such wages or hours, should not be deemed to be molestations or obstructions within the meaning of the Act of 1825; but with a proviso that this enactment should not authorise breach of contract by workmen or persuasion of workmen to break their contracts. This act also was repealed in 1871.

These statutes were soon enforced, as their predecessors had been enforced, not merely by the summary proceedings which they prescribed, but also by the more stringent means of indictments for combinations to infringe their provisions. Moreover, in the discussions which took place upon them, the question was raised and became the subject of some doubt and difference of opinion, whether in any and in what cases combinations for purposes dealt with by the acts, or for other analogous purposes, are criminal "at common law." The effect of the discussions and decisions is too doubtful to be stated here, but is attempted to be ascertained below.

For the rest, during this period the doctrine that combinations to defraud by means not criminal in themselves may be criminal, has been settled and perhaps extended (1872. Warburton); and the mode of proceeding by way of conspiracy against persons who combine to commit indictable offences has for the first time been applied to a combination to commit the common law misdemeanor of spreading false public news with intent to disturb the public markets. (1814. De Berenger.) In other respects the tendency of judicial legislation has been in general rather to narrow than to extend the application of the law of criminal combination; but no intelligible definition of "conspiracy" has yet been established.

The object of the following sections is to collect the materials for such a definition.

*Note 1.* Search has been made without success for mention before the seventeenth century of any other kind of criminal combination than that mentioned in the first part of the foregoing subsection in Britton, Bracton, Fleta, Glanville, the Mirror, the cases of confederacy and conspiracy mentioned in the Indices to the Year Books and Book of Assizes, the Register, Fitzherbert's N. B., Fitzherbert's, Brooke's and Rolle's Abridgments (titles Conspiracy, Confederacy and Corone), Rastal, Staundforde's P. C., Crompton's Justice, Pulton, the cases cited in Ashe's elaborate Index to the Common Law (1614), and in Coke, and in the more modern Text Books. The only early instance of an attempt to apply the law of conspiracy to other purposes seems to be the case, Anon. 1351, where a suit was brought to set aside judgment on a conviction for conspiracy to imprison a man wrongfully until he should pay a fine; and the court said that this was not matter of conspiracy, but rather damage and oppression of the people, and reversed the judgment.

Even the civil writ of conspiracy appears not to have been extended until the 17th century to any matters beyond the purview of the 33 Edw. 1. Instances will be found in the 15th and 16th centuries of its application to the making or use of false evidences, which may be traced to the statute, 1413, 1 Hen. 5, c. 3; but even this was not allowed in earlier times. See e.g. in 1364, Year Book, 38 Edw. 3, p. 13 b. Writ of conspiracy for conspiring to forge and put in evidence at a trial a false deed of release. Thorp, J., said, "And do you think you have a writ of conspiracy on ground of an evidence? You shall not have it."

It may be noted, with respect to two passages in Vin. Abr. Consip. (H.) 6 and 11, that the former passage attributes to Lord Holt the contrary of what he said; and that the second is merely an assertion of counsel arguendo that a certain matter was indictable which, it appears from a better report, the K. B. after two arguments held was not indictable. See the case, 1725, Edwards, in App. II. *infra*.

From very early times "conspiracy" and "confederacy" were distinguished as different crimes under the 33 Edw. 1; "conspiracy" becoming appropriated to false and malicious indictments, while "confederacy" was especially used to designate combinations for maintenance. See 1354, Anon., and 29 Ass. 45.

*Note 2.* It is said by Lord Coke (2 Inst. 561, 562), and other old authorities, that the stat. 33 Edw. 1 is only declaratory of the common law. But the only proof alleged for this proposition is the fact that the "villainous judgment" must be given by the common law because it is not given by any statute. This judgment, however, is only the ordinary judgment in attainder, and no great stress can be laid on its application to a crime so closely allied to those in which it was ordinarily given. Moreover, the attainder in conspiracy is probably to be traced to the application by judges of assize inquiring into conspiracies, champarties and maintenances under 4 Edw. 3, c. 11, of the provisions of 20 Edw. 1 for attainting champertors and maintainors. The following reasons appear to be nearly conclusive that the crime of conspiracy was created by statute, and that no such crime was known to the "common law":—

1. No mention of any such crime has been found in any work older than the first Ordinance of Conspirators, A.D. 1292, 20 Edw. 1; and it is believed that there is no earlier mention even of a civil writ or regular remedy for conspiracy. The passage in Britton, which is indexed in Nichols' edition as relating to conspiracy (i. 22, 19, p. 95), relates to embracery, and the text uses the word "alliances" and not the word "confederacies," by which it is represented in the translation. Bracton does not mention any separate crime of conspiracy. He speaks of "conspiracy" in conjunction with counselling, abetment, and aid, and says that none of these are punishable in themselves, but that if a crime is committed, then the guilt of the principal

offender extends to those who counselled, aided or contrived the crime (f. 128).

2. It was the business of the tourn and leet to inquire\* of common law crimes, but neither in the Statute of Wales (attributed to 12 Edw. 1, A.D. 1284), which contains a detailed list of all offences to be inquired into at the tourn before the sheriffs, commencing with the highest felonies and descending to offences against the assize of bread, and which gives a curious and apparently complete picture of the criminal law of that time; nor in the View of Frankpledge (attributed to reign of Edw. 2) is there mention of any kind of conspiracy, confederacy or combination.
3. In the 13 Edw. 1 stat. 1, c. 12 (Westm. 2, A.D. 1285), detailed provision is made for the punishment of malicious abettors of false appeals of felony; but, although if conspiracy, confederacy or combination had then been known to the law, mention of them might have been expected here, no reference is made to either of them.
4. Some cases of complaints to the King against conspiracies, machinations and favour by officers (*i. e.* embracery), answered by promises of special relief, will be found in the Rot. Cl. as early as 18 Edw. 1 (Rot. Cl. vol. i., p. 48 *a*, No. 32; p. 49 *a*, &c.); but the first ordinance for a general writ of conspiracy (20 Edw. 1) expresses itself to be founded on a statute which it recites, and it makes no reference to any other ground for the writ.
5. Nearly all the old forms of writs of conspiracy conclude *contra formam ordinationis*.
6. The terms of the commission of oyer and terminer are cited in several cases, from Poulters' Case (1611) downwards, to show that combinations to commit crimes may be themselves punishable at common law. Thus Coke says (Poulters' Case):—

“Also the usual commission of oyer and terminer gives power to the commission to enquire, &c., *de omnibus coadunationibus confederationibus et falsis alliganciis*; and *coadunatio* is a uniting of themselves together, *confederatio* is a combination amongst them, and *falsa alligatio* is a false binding each to the other, by bond or promise, to execute some unlawful act. In these cases before the unlawful act executed the law punishes the coadunation, confederacy or false alliance, to the end to prevent the unlawful act, *quia quando aliquid prohibetur, prohibetur et id per quod pervenitur ad illud: et affectus punitur licet non sequatur effectus*; and in these cases the common law is a law of mercy, for it prevents the malignant from doing mischief, and the innocent from suffering it.”

and in some later cases the words are cited even for the purpose of proving that combination is *per se* criminal at common law. It can however be shown almost with certainty, that they have no such meaning, and this by the best proof, namely, proof of what their meaning is, and how they came to be introduced. The words “alliances, conspiracies, confederacies and champerties” were introduced by the 2 Edw. 3, c. 7, and the 4 Edw. 3, c. 11, which followed the terms of, and was designed to enforce the 20 Edw. 1, and the 28 Edw. 1, c. 10, and the 33 Edw. 1, by criminal proceedings; and accordingly in the Articles of Inquest of 1354, set out in 27 Ass. 44, there appears an article following nearly the language of 28 Edw. 1. See also the commission of oyer and terminer of 1368, in 42 Ass. 5, to the same effect. Next in 1353, by 27 Edw. 3, st. 2, c. 25, it was made felony for merchants to make “conspiracy, confederacy, covine, imagination, murmur, or mal-engine” for the disturbance of the staples and of the price of wool, contrary to the provisions of the 27 Edw. 3, stat. 2, c. 3; and accordingly in the Articles of Inquest of the following year,

there appears an article "Also of merchants who by covin and alliance between them put a certain price on wools which are for sale in the country, so that no two may buy or pass other in buying wools beyond the certain price which themselves have ordained, to the great impoverishment of the people;" and under this article was decided the Lumbard's Case in 1369. The words "*congregationes et conventicula illicita*" are regularly used in ancient documents (e.g. 1 Rot. Cl. 371; 3 Rot. Cl. 105a), to describe riotous and seditious assemblies made *proditorie* or in breach of the peace; but their introduction into the commission is probably to be traced to the 42 Edw. 3, c. 6, which directed commissions to be issued to justices of oyer and terminer to enforce the Statutes of Labourers, of which the 37 Edw. 3, c. 5, had prohibited alliances, covines and congregations of masons and carpenters. The commission in Coke's time, 2 Inst. 161, further included "*coadjutationibus*," which means abetment, especially in disseisin by force (see Co. Litt. 180b). The result is that the words in the commission which relate to combinations do not of themselves furnish sufficient ground for the inference which has been sometimes drawn from them, that there existed in ancient times a general common law crime of conspiracy; and that on the contrary their history appears to show that these words, as they are used in the commission, refer to particular crimes of combination within the 21 Edw. 3, or created by later statutes. It may be observed that the expression "*falsis alli-gantiis*" is mistranslated "false allegations" in modern commissions.

7. The origin of the crime of conspiracy seems to have been as follows:— According to Bracton (143) there were two modes of commencing prosecutions for felonies. The first was by way of appeal, which was guarded against abuse by the personal and pecuniary liabilities of the appellor, of which details will be found in Bracton. The other mode was, that the grand jurors who were charged with the duty of making presentments or of finding indictments should inquire into suggestions of felony which might reach them "*per famam patrize*," or, in other words, either of their common knowledge or by several persons coming to inform them, without any formalities, that A. or B. had committed a crime. Thereupon the grand jurors were sworn to inquire as to the truth of the information, and if the informers proved trustworthy, the grand jurors found an indictment. Three inconveniences were discovered in the time of Edward I. in these forms of procedure. The first to be discovered was that appeals were brought by persons who had not money to pay damages. The second was that children under twelve, who could not be outlawed (Bract. 125), and against whom no damages could be recovered, were incited to bring appeals. The third was that there was no remedy against the persons who conveyed to the grand jurors a false *fama patrize*. The first of these difficulties was dealt with by 13 Edw. 1, st. 1, c. 12. The third was partially dealt with by the first Ordinance of Conspirators (20 Edw. 1); and again by the second Ordinance of Conspirators (28 Edw. 1, c. 10), and again by the third Ordinance of Conspirators (33 Edw. 1), which also dealt with the second difficulty. But these statutes only provided a remedy by writ, the 20 Edw. 1 by writ out of chancery, on which however imprisonment might be awarded, the 28 Edw. 1 by inquest without writ. The 4 Edw. 3, c. 11, made conspiracy effectively criminal, by directing the justices of either bench or of assize in sessions to hear and determine conspiracies and maintenances. See Rast. Entr. Conspl. 5, for a case in which it is expressly averred that the conspiracy was to cause a person to be indicted by "*communis vox et fama*." A further confirmation is to be found in the numerous ancient cases in which it was held that it was a good answer to a writ or in-

dictment for conspiracy that the defendant was a grand juror (or "indictor") bound to find the indictment, or that he was summoned by the jurors and compelled to inform them upon oath, or that he was bound to inform them as being a justice. In short the remedy of conspiracy was required only in those cases in which there was no other remedy or security for truth, and in which the defendants had volunteered their information, and in these cases it was applied and extended by successive statutes as experience proved its necessity.



(4698)

## SECTION II.

## THE KINDS OR PURPOSES OF CRIMINAL COMBINATIONS.

*§ 2. Arrangement of this Section.*

It is proposed in this section to consider the cases on criminal combinations in the order of certain heads or kinds of subject-matter under which they appear to have arranged themselves as they occurred; as follows:

- § 3. Combinations to commit conspiracy, properly so called, within the meaning of the three ancient ordinances of conspirators.
- § 4. Other combinations expressly prohibited by statutes now in force.
- § 5. The rule of the 17th century that combination for any crime is punishable.
- § 6. The question of a wider rule.
- § 7. Examination of cases on combination against government.
- § 8. Examination of cases on combination to pervert or defeat justice.
- § 9. Examination of cases on combination against public morals and decency.
- § 10. Examination of cases on combination to defraud.
- § 11. Examination of cases on combination to injure individuals (otherwise than by fraud).
- § 12. Examination of cases on combinations relating to trade and labour:—(1) Restraint of trade and disturbance of markets.
- § 13. Examination of cases as to trade and labour continued: (2) Coercion of individuals.
- § 14. Summary of this section:—Lord Denman's antithesis.

*§ 3. Combinations for Conspiracy, properly so called.*

The ancient ordinances of conspirators, namely 20 Edw. 1, 28 Edw. 1, and 33 Edw. 1, which are still in force, extend only to combinations for the false and malicious promotion of indictments or suits, for embracery, or for maintenance of various kinds. Embracery and maintenance are independent crimes, and they need not here be considered in detail. (See Pulton, and 1 Russ. by Gr. 254, 264). The word "conspiracy" was from an early date specially appropriated to false and malicious promotion of indictments for

felony, and it was not complete unless by the procurement of the conspirators an indictment was actually found, and the person indicted was tried and acquitted. Accordingly conspiracy is defined by Coke (3 Inst. 142-3) as "a consultation and agreement between two or more to appeal or indict an innocent falsely and maliciously of felony, whom accordingly they cause to be indicted and appealed; and afterward the party is lawfully acquitted by the verdict of twelve men." The ancient judgment for this crime was the "villainous judgment" usual in attaints for crimes of falsity in relation to justice, and was as follows:—

1372. 46 Ass. 11 (p. 307.)

"A man was attainted of conspiracy at the king's suit by indictment, wherefore it was awarded that he lose frank-law, and that he must not be put henceforth on juries, nor on assize, nor on testimony of truth, and if he had business in the king's court he must make an attorney to sue for him, and that he approach not within twelve leagues of where the king's court is, and that his goods be seized into the king's hand, and his houses wasted, and his wife and his children ousted, and his trees cut down, and his body taken and imprisoned. But if he were attainted at suit of the party, he would have but simple judgment that the plaintiff receive his damages, and that he be imprisoned, &c." See s. p. 27 Ass. 59, p. 141b. Coke, 3 Inst. 143, adds some further circumstances of aggravation.)

Even before Coke's time it had been held (1574. Sydenham) that an indictment might lie for such a combination, although the indictment preferred by the conspirators had not been found by the grand inquest; and it was finally settled by the Poulterers' Case in 1611 that the mere act of combination to commit the crime of conspiracy was punishable. During the 17th century it became further established that combinations to accuse of offences not amounting to felony might be criminal; and it remains to trace the extension which in this respect the crime of combination to commit conspiracy has received in modern times.

In 1663 (Timberley) it was held that a combination falsely to charge a man with the merely spiritual crime of fornication, with intent to extort money from him, was indictable, stress being laid on the intent to injure by extortion as giving jurisdiction to the temporal court; and according to Keble, Windham, J., said it would have been the same if the combination had been to charge with heresy or to defame or disgrace him. This case was followed in 1677 (Armstrong), and in Best's Case (1705), where the intent was laid to be to obtain money and to defame; and the K. B. (Holt, C. J.) held that "a confederacy falsely to charge a man with a thing that is a crime by any law is indictable." In 1719 (Kinnersley) the court seem to have thought it essential that the charge should be of a crime of some kind. But in 1762 (Rispal) Lord Mansfield held it sufficient that there was a combination to obtain money from a man by charging him with "a false fact,"—"whether it be to charge a man with criminal acts or such as only may affect his reputation." In 1809 (Teal) the combination was to obtain an

affiliation order by perjury; a case which may fall either under this head or under the head of combinations to pervert justice. It was anciently always held essential that the accusation should be to be made *false* as well as *malitious*. But in 1825 (Hollingberry) the K. B. held that if the purpose was to extort money by indictment, it was immaterial whether the charge was true or false; and this case was followed in 1845 (Jacobs) by the Recorder of London, with the modification that the question of truth or falsity might be material for determining the question of intent. (Cp. as to indictments under the statutes for threats to accuse of crimes with intent to extort:—1843. Hamilton, 1 C. & K. 212; 1862. Menage, 3 F. & F. 310; 1866. Cracknell, 10 Cox, 408; 1868. Richards, 11 Cox, 43.) These authorities further establish that a purpose actually to prefer a charge in a competent court or in any court is not essential. In fact in most of them the purpose was to obtain money for not preferring a charge. But it would seem to be of the essence of this crime that there should be a purpose to charge publicly, and if there is any case of conspiracy to charge a man privately, that must be regarded as a case of combination to extort or to cheat. (Cp. Yates, 1853.) In the absence of intent to extort, the purpose must still be to charge falsely or without belief of reasonable grounds. “People may lawfully meet and contrive and agree to charge a guilty person,” but “it is a crime for several people to join and agree together to prosecute a man man right or wrong.” (1629. Tailor; Lord Holt. 1705. Best; S. P. 1823. Murray.)

Under this head fall the cases of combination:—

- 1354. Anon. } to commit maintenance.
- 1356. Anon. } to commit maintenance.
- 1574. Sydenham v. Keilaway ; to indict falsely.
- 1599. Amerideth : to commit maintenance.
- 1607. Lord Gray, of Groby : to commit maintenance.
- 1608. Floyd v. Barker : to indict falsely.
- 1611. Poulters : to indict falsely.
- 1612. Ashley : to indict falsely.
- 1629. Tailor and Towlin : to indict falsely.
- 1663. Timberley : to charge with a bastard, with intent to extort.
- 1671. Opie : to commit embracery.
- 1678. Armstrong : to charge with a bastard, with intent to extort.
- 1680. Blood : to indict falsely.
- 1705. Best : to charge with a bastard, with intent to extort.
- 1719. Kinnersley : to accuse of misdemeanor, with intent to extort.
- 1756. M'Daniel : to procure a man to commit what he supposed to be a robbery, with intent falsely to indict him and obtain a reward for his conviction.
- 1760. Spragg : to indict falsely.
- 1762. Rispal : to charge with matter not criminal but defamatory, with intent to extort.
- 1763. Parsons : to accuse of murder.
- 1809. Teal : to obtain an affiliation order by perjury.
- 1809. Stratton : to indict falsely.
- 1814. Askew : to indict falsely.

1825. Hollingberry : to indict, with intent to extort.  
1833. Ford and Aldridge, to accuse of forgery, with intent to extort.  
1834. Biers : to inform falsely, with intent to extort.  
1845. Jacobs : to indict, with intent to extort.

A great number of cases of complete conspiracies, in the ancient sense, will be found in the Year Books and old Abridgments. They are now obsolete, and they are accordingly omitted both from this list and also from the Appendix.

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#### § 4. *Other Combinations expressly prohibited by Statute.*

Besides the ancient ordinances of conspirators, statutes relating to criminality of combination (other than trade combinations), have been of the following kinds.

In the reign of George 3 several acts (1797, 37 Geo. 3, c. 123; 1799, 39 Geo. 3, c. 79; 1817, 57 Geo. 3, c. 19); were passed, which in their main scope were directed against treasonable or seditious societies, but which contain sections of the most comprehensive and stringent character. The Act of 1797 makes it felony to take or administer unlawful oaths or *engagements* for various purposes, including the concealment of "any unlawful combination or confederacy." The Act of 1799 enacts that every person shall be deemed guilty of an unlawful combination and confederacy who belongs or contributes to or directly or indirectly maintains correspondence or intercourse with any society (or any branch committee, officer, or member thereof as such), which requires its members to take any oath or engagement within the Act of 1797, or any unauthorized oath; or the members of which take, subscribe or assent to any test or declaration not required by law and not authorized by approval of two justices confirmed by quarter sessions; or which has any committee, or members, or officer whose names are kept secret from the society at large, or are not entered in a book open to the inspection of every member; or which is composed of different divisions or branches, or of different parts acting in any manner separately or distinct from each other; or of which any part has any separate or distinct officer; and it provides that offenders shall be liable either to summary punishment, or, upon conviction or indictment, to transportation (now penal servitude) for seven years. The Act of 1817 further provides that every society or club which elects, appoints, nominates or employs any committee, delegate or delegates, representative or representatives, missionary or missionaries, to meet, confer, or communicate with any other society or club, or with any committee, representative, &c. of such other society or club, or to induce or persuade any person to become a member, shall be an "unlawful combination and confederacy" within the Act of 1799, and that persons joining or directly or indirectly maintaining correspondence or intercourse with any such society or with its officers, &c., as in the Act of 1799, shall be punishable as provided by that act.

These acts contain some exceptions in favour of freemasons, quakers, and charities; and the 18 & 19 Vict. c. 63, s. 12, exempts friendly societies and their meetings, at which "no business whatever is transacted other than that which directly and immediately relates to the objects of the society as declared in the rules thereof, and set forth in the certified copy thereof;" and probably similar particular exemptions are contained in some other acts. Further, the Act of 1817, s. 37, provides that the Attorney-General may in any case stay proceedings, and that a Secretary of State may remit punishments in cases under that act or the Act of 1799; and the 9 & 10 Vict. c. 33 (1846), provides that proceedings for fines or forfeitures under the Acts of 1799 and 1817 must be commenced in the name of the Attorney-General. But even these safeguards seem not to extend to the Act of 1797.

It is impossible to form any certain conclusion as to the extent to which the generality of the enacting words in these statutes may be limited by their preambles. The inclination of the judges in the few reported cases upon their construction (1802. Marks; 1816. Brodribb; 1834. Ball; 1834. Lovelass; 1834. Dixon) seems to have been to think that they are not so limited; and this view is supported by the fact that it was thought necessary expressly to save bodies so obviously harmless as meetings of quakers and of charitable societies. In any case their indirect effect in rendering many societies at least technically illegal, must be important; and in any conclusion which is formed as to the criminality or illegality of a society, there must be an implied reservation of the possible effect of these statutes. The Trades Union Act, and Criminal Law Amendment Act of 1871 (34 & 35 Vict. c. 31 and c. 32), appear not to contain anything to exclude their operation. But it has been ruled (1834. Ball) that a combination with reference to wages is not necessarily illegal for the purposes of the statutes of George 3.

The statutes next in order of general importance are those which relate to treason and to treason-felony; but these belong to the law of treason, and they do not affect the general law of conspiracy, except by applying it to treasonable purposes. (See *Mulcahy v. Reg. 1868, L. R., 3 E. & I. App. 306.*)

Conspiracies to murder any subject or alien either within or without the Queen's dominions are by the 24 & 25 Vict. c. 100, s. 4, punishable as misdemeanors, with penal servitude not exceeding ten, or imprisonment not exceeding two years.

The statutes relating to trade combinations are reserved for future subsections—§§ 12, 13.

Under this head fall the cases of treasonable combinations, and the cases of—

- 1802. Marks: trades union using unlawful oath.
- 1816. Brodribb: assembly using unlawful oath.
- 1834. Ball: trades union using unlawful oath.
- 1834. Lovelass: trades union using unlawful oath.
- 1834. Dixon: trades union using unlawful oath.
- 1852. Ahearne. conspiracy to murder.

**§ 5. Rule of 17th Century that Combination for any Crime is punishable.**

It has already been seen (*sup.* Sect. I. § 1) how in the course of the 17th century the rule established in the Poulterers' Case, that a combination to commit conspiracy was punishable, although the conspiracy had not been executed, was extended into a rule that a combination to commit any crime was punishable, although the crime had not been executed. A great number of cases are reported in which this rule has been applied. Most of them will conveniently be considered in the following paragraphs relating to particular criminal purposes, but some which do not fall within any of those groups may here be mentioned:

- 1682. Lord Grey: to commit abduction and procure adultery. (This case appears not to have been prosecuted as a case of conspiracy; but, assuming that it was so prosecuted, it was prosecuted as a combination to commit the offences mentioned. See *inf.* p. 106.)
- 1809. Pollman: to commit the misdemeanor of obtaining money for procuring an office of public trust.
- 1820. King: to poison horses (9 Geo. 1, c. 22).
- 1820. Hunt: to form an unlawful assembly.
- 1827. Wakefield: for abduction of an heiress.
- 1830. Maudsley: to poison.
- 1848. Brittain: to commit forgery.
- 1848. Button: by workmen to dye goods for their own profit with the master's dyes.
- 1851. Thompson: by removing customable goods without payment of duty (3 & 4 Will. 4, c. 120).
- 1864. Kohn: to commit barratry with intent to defraud underwriters (24 & 25 Vict. c. 97, ss. 42—4).
- 1868. Desmond: to commit prison breach.
- 1871. Boulton: to commit unnatural crime.
- 1871. Taylor: to steal (see the case and *quære*).

With respect to these cases, it need only be observed, that since the establishment of the doctrine that a combination to commit any crime is indictable as a criminal confederacy or combination, notwithstanding that the proposed acts may have been criminal only by virtue of some statute, the criminal combination has always been described as a common law crime, in the sense that it need not conclude *contra formam statuti* (1721. Journeymen Tailors of Cambridge, and all the later cases), and that it is punishable as a misdemeanor at common law and not in the manner in which the proposed crime would be punishable; and it was held in 1851 (Thompson), that the repeal of the statute before the trial of the indictment for the combination to infringe its provisions was no bar to the trial. Lord Campbell observed, that this rule might have the effect of indirectly avoiding a limitation of time prescribed by a statute for the prosecution of offenders against its provisions; and the case before the court afforded an instance of that result.

The expression, that a conspiracy or combination to commit a crime is criminal at common law, is applied without regard to whether the proposed crime is or is not statutory; whence it follows, that when a combination is said to be criminal at common law, it is not necessarily implied that the criminality of the combination does not depend on the fact that the combination is for violation of a statute.

It will be seen below (§ 13), that in numerous cases violations of statutes relating to labour have been punished by way of indictment for conspiracy; but it does not appear, that in any other case, except perhaps in cases under the Revenue Acts, persons have been indicted for combining to violate provisions of a statute for the breach of which the statute prescribes only a summary penalty or punishment.

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### § 6. *The Question of a wider Rule.*

It has already been seen, that during the 18th century, an impression obtained currency that a combination might in many cases be criminal, although the acts proposed would not be criminal in the absence of combination. The most convenient mode of dealing with this subject seems to be firstly to examine the decisions and dicta under each of the several groups in which the cases bearing on the question have arranged themselves ( §§ 7—13); and, secondly, to examine (§ 14) certain more general expressions which do not purport, or which are cited as not purporting, to be confined to any or all of these special groups.

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### § 7. *Examination of Cases on Combinations against the Government.*

Cases which have a bearing on the question, whether in matters of a directly public nature, combinations may be criminal which are for acts not criminal apart from combination, are the following:—

- 1665. Starling: combination to lessen the king's revenue.
- 1769. Virtue *v.* Lord Clive: combination by officers to throw up their commissions in time of danger.
- 1814. De Berenger: combination to disturb the funds by false rumours.
- 1839. Vincent:
- 1840. Shellard: } Combination to excite disaffection or insurrection.
- 1844. O'Connell: }

The origin of the doctrine that a combination may be criminal which is directed against the public as a whole or against the gov-

ernment is to be found in the case of the Brewers of London (1665. Starling), where the indictment set out that the excise had been settled by parliament on the king as part of his revenue, and that the defendants conspired to depauperate the farmers of the excise. The K. B. after several debates gave judgment for the crown on the ground that the effect of depauperating the farmers of the excise must necessarily be to make them incapable of rendering the king his revenue, and so the offence (as Lord Holt says of it in 1704. Daniell) was "directly as a publick nature and levelled at the government, and the gist of the offence was its influence on the publick." On the same ground in the cases of Vincent (1839), Shellard (1840), and O'Connell (1844), combinations to excite insurrection or disaffection have been held indictable. It is worthy of observation that the purposes imputed by the court to the defendants in Starling's Case in 1665 seem, according to the doctrines of those times as shown in the "Case of Currants" (1707. Bates; Lane, 22), to have been regarded as punishable independently of combination (Cp. the Exchequer Act, 33 Hen. 8, c. 39, *sup.* Sect. I. § 1); and that according to authorities of the 17th century the use of seditious language, as in the cases of Vincent, Shellard and O'Connell, would also have been indictable without combination. (1662. Field, 1 Sid. 69; 1679. Harrington, 1 Ventr 324.) In Virtue's Case (1769) the whole of the officers of the East India Company's service in command of Sepoys, with the exception of the field officers, combined to throw up their commissions at once at a time of public danger, and before the expiration of the period for which they had received advanced pay, on the ground of a grievance with respect to allowances. The question came before the K. B. whether such resignations were operative to release the officers from their duty to obey orders. Lord Mansfield, C. J., and Aston and Willes, JJ., held, that under the Indian Mutiny Act then in force the officers were not at liberty to resign under all circumstances; and that the circumstances of public danger and of general combination to resign made such resignations inoperative. Yates, J. went further, and said that this combination was criminal. De Berenger's Case (1814) is mentioned here because some of the observations made in it refer to the injury which the public may receive from disturbance of the funds by false news. But according to a series of cases from the 14th century downwards, the circulation of false news, especially if the purpose is to disturb markets or prices, is indictable irrespectively of combination; and so this case appears to fall within the rule of the criminality of combinations to commit crimes. (See 1369. Lumbard's Case; 1620. Maddock, 2 Rol. Rep. 107; Jenk. 1 Cent. 93; 1680. Harris, 7 St. Tr. 999, by all the judges; 7 & 8 Vict. c. 24, s. 4; Cp. 1800. Waddington, 1 East, Rep. 154).

These cases appear not perhaps to establish but still to tend strongly to establish a rule that combinations directed against

the government or public safety may be criminal, although the acts proposed might not be criminal in the absence of combination : but they furnish no indication of the limits of the rule, supposing it to exist.

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*§ 8. Examination of Cases on Combination to pervert or defeat Justice.*

The next group consists of cases on combinations to pervert or defeat the administration of justice ;—a kind of combination which is *in pari materia* with those against which the original ordinances of conspirators were directed.

To this group belong the cases of combination.

- 1796. Mawbey: by justices, to influence the King's Bench by false certificates of the repair of a road.
- 1802. Steventon: to obstruct justice by persuading a witness for the crown in an information not to appear.
- 1804. Locker: to procure a ward in chancery to marry one of the defendants.
- 1807. Claridge *v.* Hoare: to prevent a prosecution. (*Dict.* by Lord Eldon.)
- 1814. Wade *v.* Broughton: stealing a ward in chancery for the sake of her fortune. (*Dict.* by Lord Eldon.)
- 1818. Kroehl: "to procure the discharge of the defendant K. from custody on mesne process, without giving notice to the plaintiff's attorney."
- 1819. Roberts *v.* Roberts: to get rid of an excise information by creating a fictitious qualification to kill game. (*Dict.* by Best, J.)
- 1820. The Queen's Case: to suborn witnesses to commit perjury.
- 1824. Thomas: to produce false witnesses at a trial.
- 1826. Bushell *v.* Barrett: to buy off witnesses on an information for penalties before justices.
- 1837. Murphy: to prevent levy of a church rate by libelling the collector and inciting persons to resist him.
- 1852. Hamp: to obstruct justice by paying a witness to forfeit his recognizances for appearance at a criminal trial.

In the cases of Mawbey, Steventon, The Queen, Thomas, Bushell and Hamp, it seems clear that the acts proposed were indictable at common law apart from the combination. (See Vin. Abr. Ind. (E.) 4; 1726. Dupee, 2 Sess. Ca. 11; Fitzgib 263; 1807. Omeally *v.* Newell, 8 East, 364; 1801. Higgins, 2 East, Rep. 5; 1791. Jolliffe, 4 T. R. 285.) So in the cases of Locker and of Wade *v.* Broughton. (See 1738. Pierson, Andr. 310, 2 Stra. 1107; 1729. Harris, 2 P. Wms. 560.) In the case of Roberts *v.* Roberts the false deed must have been proved by perjury before it could have been used as a defence to the information, and even if it had been used so as to deceive the court without actual perjury, its use would seem to be within the principle of Omeally *v.* Newell, cited above, or of Mawbey (1796). The case of Kroehl is too

briefly reported for it to be possible to say whether the act proposed was indictable without combination. (See Fawcett, 2 East, P. C. 862.) In Claridge v. Hoare, it must be presumed that Lord Eldon was referring either to composition of felony or to the use of improper means, such as those used in the cases of Steventon and Hamp. Lastly, in Murphy's Case there was not only a libel but also an incitement to riot. On the whole it is conceived that all these are cases in which the acts proposed were, at the times when the cases were decided, punishable on indictment or information, or at least as contempts of court. But it seems possible that, in matters of this nature, the criminal courts would not hold themselves strictly bound by these limits, and that combinations for such acts on the verge of criminality might be held indictable, although the acts might be not indictable apart from the combination. It is conceived, however, that some kind of falsity or violence or abuse of process of the court would be necessary. And here the difficulty recurs of obtaining any distinct and definable limitation when once the established lines of the ordinary criminal law are overstepped.

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§ 9. *Examination of the Cases on Combination against Public Morals and Decency.*

Cases of combination for acts grossly in violation of public morals or decency are the following:—

- 1763. Delaval: to make a colorable assignment of a female apprentice for purposes of prostitution.
- 1780. Young: by officers of a workhouse to prevent the burial of a corpse.
- 1851. Mears: to entice a girl of 15 by false pretences to have illicit connection with a man.
- 1864. Howell: to procure an unmarried girl of 17 to become a common prostitute.

It can hardly be doubted that in the three former of these cases the acts proposed were indictable at the dates of those cases, independently of combination, on the principle established in the cases of Sedley (1664. 1. Sid, 168; 1616. Bagg), and many other cases, that conduct grossly contrary to public morals or public decency was punishable irrespectively of combination. It can hardly be doubted, for example, that the master of a female apprentice would have been indictable, in 1763, even if he would not now be indictable, if he induced his apprentice to practise prostitution for his profit, and this was in substance the conduct of the principal defendant in Delaval's Case. Lord Mansfield, indeed, there relied on a then recent case, in which a prosecution had been directed of a man who had made an assignment of his wife to another man. (Cp. further as to this class, 1692. Johnson, Comb. 377; 1788. Lynn, 2

T. R. 734; 1 Leach, 497; 1820. Gilles, R. & R. 366, *n.*; 1840. Stewart, 12 A. & E. 773.) So in Howell's Case there were facts abundantly sufficient to have supported a conviction of a sole defendant on similar grounds, if they had been properly laid in the indictment; but the indictment seems to have failed to show that the girl was not previously of bad character. Bramwell, B., is reported to have ruled that any unlawfulness in the state of things proposed to be brought about would suffice, according to Lord Denman's definition of conspiracy (*e*), and that, since agreements for prostitution or claims for goods supplied for purposes of prostitution are illegal in the sense that they cannot be enforced, prostitution itself is a sufficiently illegal state of things to render indictable a combination to bring it about. It is conceived that the expressions attributed to Bramwell, B., cannot be correctly reported. They would appear to involve the criminality of every assignation with a woman of bad character. No such doctrine is found in any earlier case; nor is it involved in the early precedents of indictments for adultery in times when adultery was both an ecclesiastical and a temporal offence. (*E. g.* Tremayne's Prec. pp. 209, 213.) An act was passed by the Long Parliament in 1650 (c. 10, p. 121, of Scobell's Ordinances), in the sense of the expressions reported in Howell's Case; but it was not continued by Charles II.

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§ 10. *Examination of Cases on Combination to defraud.*

The history of combinations to defraud, and the manner in which, after certain kinds of cheats had ceased to be indictable when committed by one person, they continued to be indictable when done or planned by persons in combination, have already been described; and it remains to consider briefly what is the nature of the fraud or cheat which will suffice to make criminal the combination to effect such a fraud or cheat. The definitions of fraud and cheat belong to the general law of crimes, and they cannot here be discussed. The essence of a cheat appears to consist in (i) a false representation by the defendant by words, instruments or conduct (active or negative) that a certain state of facts (other than a condition of his own mind) exists or does not exist; (ii) the fact that a belief in the truth of the representation had an effect on the prosecutor as a material inducement to, or a material condition of, his consenting or not refusing to part with a right or forego a claim or undertake a liability of pecuniary value or consequence; and (iii) the fact that the false representation was intended by the defendant to have that effect, or, to use Bentham's phrase (1 Morals and Legisl. 141), that

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(e) See as to this, *inf.* § 14.

(4709)

the prospect of producing that effect "constituted one of the links in the chain of causes by which the person was determined" to make the false representation. In other cases the generality of this principle has been guarded by limitations; but in the crime of combination to defraud only one limitation appears to remain, namely, that the intended fraud must involve something which amounts or would, but for restrictions imposed by statutes made *alio intuitu*, amount to a wrong for which there is a civil remedy at law or in equity. It has been recently determined (1870. Warburton) that a merely equitable wrong will suffice; and it was ruled in 1858 (Timothy, Channell B.) that a combination to defraud by false verbal representations of the solvency of a bank was criminal, although by reason of Lord Tenterden's Act (9 Geo. 4, c. 14) the defendants might not have incurred any civil liability. A case (1833. Levi) in which a "knock out" at an auction was held indictable, may be thought to have gone to the farthest extent which is compatible with the application of any principle. It may be explained on the ground that, had the auctioneer known of the combination, he would not have knocked down the goods to any of the persons concerned in it;—that his consent to the transfer of property was obtained by a false appearance of competition.

It has been uniformly held in modern times that a false pretence may suffice for conspiracy, which would not suffice for the statutory crime of obtaining by false pretences, but it may be doubted whether some of the same limitations which have been applied in the construction of the statute do not apply in conspiracies to defraud. Such are—

- a. The rule, that the prosecutor must have intended to part with his whole right of property in the thing:—e. g. to obtain by false pretences the bailment of a horse, intending never to pay the hire, is not an obtaining of the horse by false pretences;
- b. The rule, that a promise (as distinguished from a representation of ability to pay &c., or of existing foundations of a future ability to pay &c.) will not suffice;
- c. The rule, that the pretence must be of a definite and "triable" state of facts, and not merely false and exaggerated praise or dispraise.

In general, it would seem that in cases of false pretences under the statute, it is for the court to say whether the proposed deceit amounted to a fraud in law, and for the jury or other judge of facts to say whether the thing was obtained by it; but in a conspiracy to defraud, the only question for the jury seems to be whether the defendants meant to use the fraud for the purpose of obtaining the thing. Here a question arises which goes to the root of the doctrine of conspiracy. Suppose a case in which the purpose to cheat is plain, but the proposed deceit is such that it could not have any effect for deceiving the persons intended to be defrauded. Here,

if the essence of the conspiracy is merely in the intent, the agreement for such a purpose must be sufficient, and this view is perhaps supported by some of the ancient cases of treason. On the other hand, to treat such a combination as criminal would be like indicting a man or several men for attempting or conspiring to murder another by conjurations. Such a doctrine appears nevertheless to follow from those cases or *dicta* in which it has been ruled or suggested that combinations to "injure," "predjudice," "intimidate" or "coerce," are criminal irrespectively of the criminality of the means to be used. But if on the other hand the law of conspiracy is, as its history seems to indicate, merely an extension of the law of attempts to commit crimes, then the result seems to follow that the proposed means must be such as might probably be effectual for the proposed end. On the other hand, it is not probable that all the refinements of the law of attempts would be applied to conspiracy. A conspiracy to pick a man's pocket would probably be held criminal, although there was nothing in the pocket. A conspiracy to kill a man by shooting through the partition of a room in which he was supposed to be might possibly be held criminal, although if in fact the man were not in the room, such an act might not be an attempt to murder him. So a combination to defraud by means likely to defraud would probably be held criminal, although there were circumstances which would prevent the use of the means in the particular case from being punishable as an attempt. (Cp. 1849. Cluderay, 1 Den. 514. But see 1871. Taylor, as to evidence of a conspiracy to attempt a crime.)

Under this part of this head fall cases of combination to cheat:—

- 1674. Thody: by false dice.
- 1704. Orbell: by a bet on a race in which a runner had been bought.
- 1744. Robinson: by personation.
- 1782. Hevey: by a sham bill of exchange.
- 1803. Brisac: by officers by defrauding the government by false vouchers.
- 1808. Roberts: by passing with tradesmen as persons of fortune.
- 1816. Pywell: by pretences of the soundness of a horse.
- 1818. Gill: by false pretences.
- 1819. Anon.: by means not described.
- 1824. Whitehead: by false pretences.
- 1826. Cooke: by false pretences.
- 1826. Serjeant: by perjury and false pretences to procure a youth of seventeen to marry a woman of ill fame, with intent to defraud him of his property.
- 1827. Mott: by fabricating shares.
- 1831. Fowle: by means not stated. (Ruled too general.)
- 1832. Jones: by putting away the goods of an insolvent trader. (Ruled not indictable. But see 1857, Hall, *infra*.)
- 1833. Bloomfield v. Blake: by pretence of legal process.
- 1833. Levi: by knock-out at an auction.
- 1834. Richardson: by removing goods pending an order for immediate execution. (Ruled not indictable.)
- 1836. Hamilton: by false pretences.
- 1839. Peck: by obtaining goods without paying for them. (Held too general.)

1841. Steel; by false pretences.  
 1842. Parker; by false pretences.  
 1843. Kenrick; by false pretences.  
 1844. Ward; by false pretences.  
 1844. Blake; by false declarations for the customs.  
 1844. King; by false pretences. (Pleading.)  
 1846. Gompertz; by false pretences.  
 1847. Sydserff; by means not stated. (Held good.)  
 1849. Wright; by false affidavits for procuring transfer of stock.  
 1852. Whitehouse; by false pretences.  
 1852. Rycroft; by means not stated.  
 1852. Read; by pretences as to soundness of horses.  
 1853. Yates; by false pretences and extortion.  
 1854. Carlisle; by false representations.  
 1856. Bullock; by false pretences.  
 1857. Stapylton; by publishing fraudulent accounts of a bank.  
 1857. Hall; by removing goods after an act of bankruptcy.  
 1858. Timothy; by false representations of profits of a business.  
 1858. Esdaile (or Brown); by false representations of the solvency of a bank.  
 1859. Absolon; by transferring railway tickets which were not transferable.  
 1860. Hudson; by fraudulent gambling.  
 1864. Latham; by false pretences.  
 1864. Knowlden; by means not stated.  
 1865. Barry; by falsely pretending to an insurance office that certain goods had been burnt.  
 1865. Burch; by publishing a fraudulent balance sheet.  
 1869 Lewis; by a mock auction.  
 1869. Gurney; by a fraudulent prospectus of a projected company, and by false accounts (24 & 25 Vict. c. 96, s. 94). (Acquitted.)  
 1870. Warburton; by false accounts between partners.
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**§ 11. *Examination of the Cases on Combination to injure Individuals (otherwise than by Fraud.)***

The origin of the suggestion, that combinations to injure private persons may be criminal, although the proposed means of injury would not be criminal apart from combination, may be traced partly to a misapprehension of the ground of the determination in Starling's Case (1665), partly to an application of the analogy of the law of combinations to defraud, partly to the passage in Hawkins (1, 72, 2; published 1717), in which it was stated, "there can be no doubt but that all confederacies whatever wrongfully to prejudice a third person, are highly criminal at common law." Hawkins' authorities for this proposition consist of seven cases on maintenance and conspiracy (properly so called) within the ordinances of conspirators (1354. Art. of Inq.; 1607. Lord Gray of Groby; 1611. Poulterers' Case; 1663. Timberley; 1678. Armstrong; 1699. Savile v. Roberts, on the civil writ of conspiracy, and 1705. Best), and of Starling's Case (1665), which is stated

below (*f*). In none of these cases is there any decision which tends to establish his proposition, but at most some arguments of counsel, and some general expressions attributed to the courts, which will be found examined below (§ 14, n.). It is now to be inquired how far this doctrine is confirmed or negatived by decisions; and for this purpose it is necessary to enter into greater detail than has been necessary in former subsections. And first with respect to express decisions:—

1351. Anon. Combination for false imprisonment and extortion held not indictable as a conspiracy; being only damage and oppression. See the case in App. II. *inf.*

1665. Starling. In the Case of Brewers of London (*sup.* § 7), the jury convicted the defendants of having confederated to depauperate the farmers of excise. During several debates on motion in arrest of judgment, it was argued for the crown that this was sufficient; but no intimation appears in any report that the court acceded to this view. On the contrary, it was long before they were able to determine that the judgment ought to stand; and they at length supported it only on the ground that the indictment alleged that the excise had been settled on the king as a part of his revenue, and that to depauperate the farmers must have the effect of disabling them from rendering him his revenue. In Daniell's Case (1704), Lord Holt, after agreeing that it was not criminal to combine not to deal with a tradesman, and denying that it was not criminal to combine to rob or murder, explained the exceptional ground on which the judgment in this case rested (*sup.* § 7). Starling's Case, being after verdict, appears to amount to a decision that a combination to impoverish a man (other than the king) by means not criminal in themselves, is not criminal. See the case in App. II. *inf.*

1685. Salter. Here the indictment was quashed on motion, but no inference can be drawn from this case, because there was plainly neither any indictable offence, nor any combination. The words "*per conspirationem*" were inserted, according to the practice of that date, merely by way of aggravation, or as being equivalent to "contriving."

1719. Cope. Here the defendants had bribed a cardmaker's apprentice to spoil his master's cards by putting grease into them. It seems clear that at that date such an act was punishable in the apprentice (see 1727. Edmonds, 1 Sess. Ca. 288, p. 357; and by Powell and Gould, J. J., in 1704. Daniell; and ep. 1848. Button; and 5 Eliz. c. 4, s. 35); and if so, then according to the principles explained in *R. v. Higgins* (1801. 2 East, Rep. 5), the conduct of each of the defendants was criminal independently of the conspiracy.

1725. Edwards. Here the combination was to charge the inhabitants of a parish to their prejudice, by bribing a poor man settled there to marry a poor woman with child of a bastard. It was urged by Serj. Comyns for the crown (apparently citing from Hawkins), that "a bare contrivance to act to the prejudice of another is criminal." The case was twice argued; first on motion to quash the indictment, and again on demurrer. The King's Bench refused to quash the indictment on motion, because it was not the practice to quash indictments on motion in cases of any doubt, if an ill design appeared in the defendants. Lord Raymond, C. J., said, "Indictments for conspiracies are not allowed to be quashed, where the thing that is conspired is in its own nature criminal. But where it plainly appears by the indictment that the act which was done to the prejudice of another was a lawful act, the court hath a discretionary power to quash. If it be doubtful whether the act done be criminal or not, yet if it be done with an ill intent or design, we will not quash

(*f*) His later editors add—1719. Cope: 1721. Tailors of Cambridge; 1725. Edwards; which are also considered below.

the indictment. I am of opinion the indictment in this case ought not to be quashed; but the defendants must be left to demur or plead to it, as they think fit." But on demurrer, "it was held not an indictable offence." In another report the determination reported is, "and on demurer *judicium pro defendantem*, because not an offence indictable."

1752. Chetwynd v. Lindon. Here Lord Hardwicke thought that a combination to set up a supposititious child as a legitimate one, so as to impede the course of descent in law, and defeat the heir-at-law, might perhaps be indictable; but that where the combination was to set up a child as the illegitimate child of a man who desired to have a child by the woman whom he kept, the object was a merely private grievance, and the combination was therefore not criminal.

1775. Leigh. Here the combination was by hissing and riot to prevent the actor Macklin from playing. The defendants were convicted, but the matter being settled, no judgment was passed; and therefore, as the learned reporters of Manning & Grainger's Reports (6 M. & G. 217, n.) observe, "the defendants had no opportunity, if they had been so advised, of questioning the sufficiency of the indictment by a motion in arrest of judgment." Moreover it is doubtful whether the indictment (which is set out in 4 Wentw. Pl. 443) in this case was for a conspiracy. The charge laid in each count is riot and obstruction of the play. Words of conspiracy do not appear in any count but the first, and there only in the inducements. So the reporters in 1 C. & K. (28, n.) observe that, "although this case is commonly cited as one of indictment for conspiracy, there was no count in which a conspiracy is charged as the *corpus delicti*," and that "the first count is the only one in which anything at all touching on conspiracy occurs." In a civil action of assault in 1809 (Clifford v. Brandon), Sir J. Mansfield is reported to have said, that "if any body of men were to go to the theatre with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a deliberate and preconcerted scheme would amount to conspiracy;" but it is not unreasonable to suppose that this opinion (which was not necessary for the decision of the case) was founded on some statements (by counsel *arguendo* in Mawbey, 1796) as to the effect of this case, which were anterior to the publication of any report of it. In Gregory v. The Duke of Brunswick (1843), the action was for damages for a combination to hiss an actor; and nothing appears to have been suggested by the court at nisi prius or in banc as to the criminality of such a combination.

1783. Eccles. See this case below, § 13, cases on trade.

1783. Compton. The expression of opinion in this case was inconsistent with the decision in Edward's Case (*sup.*), and must be taken to be overruled by the cases of Fowler (1788) and Seward (1834), *inf.*

1788. Fowler. Here the combination was to burden a parish by bribing a poor man there, who had got a poor woman of another parish with a child, to marry the woman. Buller, J., ruled that it was essential that there should have been "some violence, threat or contrivance," or "some sinister means," and further that the marriage should have been forced on the parties against their will—a rule which clearly brings the case within the decisions that it is indictable, independently of combination, to make persons marry by force or threats or fraud. (1670. Parris, 1 Sid. 431; 1732. Parkins, 1 Sess. Ca. 176, p. 213.)

1792. Parkhouse. It was ruled that upon an indictment for combination to charge a parish by forcing paupers to marry by threats and menaces against the peace, although it need not be averred that the marriage was against their will, this must be proved.

1811. Turner. Here the combination was to trespass with arms by night in pursuit of hares. This case occurred before the passing of the first Night Poaching Act (1817, 57 Geo. 3, c. 90), and the K. B. (Lord Ellenborough, C. J., Le Blanc, Bayley and Grose, JJ.) held that this combination was not indictable, inasmuch as it was merely for a civil trespass. (See the case in App. II.) The decision was wrong, because the combination was for acts amount-

ing in law to the crime of unlawful assembly with intent to resist apprehension, and *in terrorrem* (1816. Brodribb); but the principle of the decision has been approved (1834. Seward, by Taunton, J.; 1843. Kenrick, by Lord Denman C. J., *pro cur.*) even by the judges who questioned the particular application of it, and the disapproval expressed by Lord Campbell in Rowland's Case (1851) was expressly put on the ground that the combination was for an indictable offence.

1826. Cooke. This case is here mentioned because the indictment contained averments of an intent to disquiet and disturb a person in the possession of his estates. But it also averred an intent to obtain money by false pretences. The case is reported only for a point of procedure, and no observations were made upon the nature of the offence.

1834. Seward. Here the combination was to burden a parish by bribing a poor man settled there to marry a poor woman with child. The K. B. arrested judgment and affirmed the ruling in Fowler's Case. Lord Campbell, C. J., said, "An indictment for a conspiracy ought to show, either that it was for an unlawful purpose, or to effect a lawful purpose by unlawful means: that is not done here . . . When it is said that such a proceeding is a conspiracy, because it is to be carried into effect by unlawful<sup>1</sup> means, we must see in the means stated something which amounts to an offence." Taunton, J.: "Merely persuading an unmarried man and woman in poor circumstances to contract matrimony is not an offence. If indeed it were done by unfair and undue means, it might be unlawful; but that is not stated. There is no averment that the parties were unwilling, or that the marriage was brought about by any fraud, stratagem, or concealment, or by duress or threat. No unlawful means are stated, and the thing in itself is not an offence." (See *sup.* in 1788. Fowler.)

These authorities on the whole strongly favour the view that a combination to injure a private person (otherwise than by fraud) is not as a general rule criminal unless criminal means are to be used. At the same time expressions are to be found in some cases which imply a doubt as to the universality of the rule.

In Stratton's Case (1809); where the indictment was for a combination for false and malicious prosecution, the indictment also alleged an intent to deprive the prosecutor of his office. In Kenrick's Case in 1843, Lord Denman said, "If in the case of *R. v. Turner*, the meditated injury, instead of ending with the trespass, had been planned for the purpose of seizing the landowner, or driving him from the country, we have no reason to think that the learned judge would have condemned an indictment for a conspiracy to effect that object." In Rowlands' Case (1851), during the argument it was asked whether a combination to entice away workmen was indictable. Lord Campbell said, "Would it not be indictable, if it were done for the purpose of ruining a tradesman?" In Duffield's Case (1851), Erle, J., is represented to have said during the argument, with reference to Turner's Case, "A conspiracy to injure a man in his private property; a conspiracy to prevent all customers coming to his shop—what is that but a civil injury? A conspiracy to injure—two men combining to interfere with a man's civil right—is indictable." In Rowlands' Case (1851), the same judge, after stating that it was lawful for persons to combine for their own benefit, added, "But I consider the law to be clear so far only as while the purpose of the combination is to obtain a benefit for the parties who combine, a benefit which by law they can claim. I make that remark, because a combination for the purpose of injuring another is a combination of a different nature, directed personally against the party to be injured; and the law allowing them to combine for the purpose of obtaining a lawful benefit to themselves, gives no sanction to combinations which have for their immediate purpose the hurt of another." Lastly, in *Lumley v. Gye* (1853), where the question was, whether an action lay for maliciously inducing a singer to break her contract, Crompton, J., said: "Suppose a trader,

with a malicious intent to ruin a rival trader, goes to a banker or other party who owes money to his rival, and begs him not to pay the money which he owes him, and by that means ruins or greatly prejudices the party, I am by no means prepared to say that an action could not be maintained, and that damages beyond the amount of the debt, if the injury were great, or much less than such amount if the injury were less serious, might not be recovered. Where two or more parties were concerned in inflicting such an injury, an indictment or a writ of conspiracy at common law might perhaps be maintained."

In Wentworth's Precedents (vol. 4, p. 105), there is a precedent of an indictment (A. D. 1788-9) for a combination to impoverish R. Meux, and to ruin him in his trade of a common brewer, by persuading his customers to leave him. In the same book (vol. 6, p. 439) there is an indictment for a combination to ruin a gun-manufacturer by raising riots, and by seducing away his workmen, and by violence to his servants. The latter indictment is clearly good on the grounds of the riot and violence, though probably not so on the ground of seduction of workmen (see 1704. Best; 1851. Rowlands). The former precedent may well be questioned. Had a case of so much importance been tried, it would probably have been reported; and the old books of precedents include many indictments which modern decisions have deprived of such authority as they may once have had.

It is conceived that these expressions—for the most part amounting only to a question or a doubt—are not sufficient to establish exceptions to the principles involved in the decisions set out in the earlier part of this subsection. Exceptions may perhaps be established by future decisions, but in the meantime it seems impossible to discover any clear rule by which it can be known beforehand what the nature of those exceptions may be. This difficulty presses on the law of conspiracy wherever it goes beyond the plain lines of the ordinary criminal law, and would perhaps be greatest in the case of any such extension at this point.

The late Serjeant Talfourd, in his edition of Dick. Q. S., at p. 335, makes the following observations on this subject:—"It is not easy to understand on what principle conspiracies have been helden indictable, where neither the end nor the means are in themselves regarded by the law as criminal, however reprehensible in point of morals. Mere concert is not in itself a crime; for associations to prosecute felons, and even to put the law in force against political offenders, have been helden legal (1823. Murray, at Guildhall, Abbott C. J.) If then there be no indictable offence in the object, no indictable offence in the means, and no indictable offence in the concert, in what part of the conduct of the conspirators is the offence to be found? Can several circumstances, each perfectly lawful, make up an unlawful act? And yet such is the general language held on this subject, that at one time the immorality of the object is relied on; at another the evidence of the means; while at all times, the concert is stated to be the essence of the charge; and yet that concert, independent of an illegal object, or illegal means, is admitted to be blameless.

"The utmost limit of the modern doctrine of conspiracy seems to be reached in the decisions respecting concerted disapprobation of a performer or a piece at the theatre." [He then cites Sir J. Mansfield's observation in Clifford v. Brandon, and continues:—] "In this case the act is lawful; the means are lawful; the motive may be even laudable; as if a notoriously immoral piece were announced, and the parties determined to oppose it; and yet the concert alone makes the crime. It is extremely difficult to understand this, unless concert be a crime; and still more difficult to reconcile it, or many other of the cases, to the decision of the King's Bench in 1811 (Turner)."

See as to combinations to break contracts, *inf. § 13.*

§ 12. *Examination of Cases on Combination relating to Trade and Labour.—(1) Restraint of Trade and Disturbance of Markets.*

Some traces may be found in the ancient books of a doctrine that it may be criminal, independently of combination, for one man to oblige another (by bond or otherwise) to abstain from the exercise of his proper craft or employment (Yearb. 2 Hen. 5, 5 b, 22, set out in 11 Rep. p. 53 b, and in 1 Sm. L. C., Mitchell *v.* Reynolds; Anon. 2 Leon. 210, on the authority of the former case); and if this was the law it would follow that a combination for the like purpose might be criminal. A more general doctrine was several times suggested by Crompton, J. (*e. g.* 1856. Hilton *v.* Eckersley), that all "agreements tending directly to impede and interfere with the free course of trade and manufacture" were not only illegal in the sense that they could not be enforced, but criminal combinations. It does not appear that this doctrine ever received the assent of other judges. Lord Campbell, C. J. and Erle, J. in the case cited disapproved it. The Exchequer Chamber in the same case, and the Q. B. in Hornby *v.* Close (1867) declined to express an opinion upon it; in the numerous cases of indictments of workmen for combinations of various prohibited kinds, no suggestion appears ever to have been made that it could be applied; and it has been usual to admit the right of workmen to strike and of employers to lock out in combination. The question is now concluded by the 34 & 35 Vict. c. 31, 32, as to combinations of employers and workmen, and it is not likely to occur in any other case. Should it become necessary to determine the question, it is conceived that it must be held that up to the present time the doctrine has not been established by any binding authority. Moreover the civil courts have in modern times gone very far in holding that agreements between individuals in restraint of the trade of one of them may be not only not criminal but legal and enforceable; and a rule which is so vague and subject to such wide and undefined exceptions does not appear to be properly the matter of criminal law.

Disturbances of the public markets, of prices of goods and of labour, have in like manner been sometimes regarded as criminal independently of combination, and of the numerous statutes for prohibiting them (Cp. 1369. Lumbard's Case; 1636. Midwinter, where nothing seems to have been said of the combination; 1818. Hilbers; Cp. 1800. Waddington, 1 East, Rep. 143; 1814. De Berenger); and there are some cases of indictments for combinations expressly prohibited by statutes as combinations for these purposes. (1698. Anon.; 1758. Norris). All the ancient acts have now been repealed; but the 7 & 8 Vict. c. 24, which repealed the statutes relating to forestalling, engrossing and regrating, and also

extinguished their criminality at common law, enacted by sect. 4, that nothing in its provisions should "apply to the offence of knowingly and fraudulently spreading or conspiring to spread any false rumour with intent to enhance or decoy the price of any goods or merchandize, or to the offence of preventing or endeavouring to prevent by force or threats any goods, wares or merchandize being brought to any fair or market, but that every such offence may be inquired of, tried and punished as if this act had not been passed." (See 1800. Waddington, 1 East, Rep. 143; 1814. Do Berenger.)

There is a case of some importance (1783. Eccles), which seems to have proceeded partly on the ground suggested by the ancient cases on restraint of trade, partly on the ground of disturbance of the markets or prices.

Several defendants (apparently master tailors) were indicted for combining to impoverish and prevent the prosecutor (apparently a rival master tailor) from trading. The indictment did not set out the proposed means; and the question was, whether it was sufficient. The K. B. held that it was sufficient; but on what ground, does not clearly appear. Lord Mansfield is reported to have said, "The illegal combination is the *gist* of the offence. Persons in possession of any articles of trade may sell them at such prices as they individually may please, but if they confederate and agree not to sell them under certain prices, it is conspiracy; so every man may work at what price he pleases, but a combination not to work under certain prices is an indictable offence." Lord Ellenborough, in Turner's Case (1811), said that this case seemed to have been determined on the ground of restraint of trade. It may, however, be doubted whether the language of the court does not show that it proceeded on the ground of an assumed combination to disturb prices. If it proceeded on the ground of the intent to "impoverish," it is opposed to Starling's Case (1665), and apparently also to Rowland's Case (1851), and since the last case the decision on the sufficiency of the declaration seems questionable.

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§ 13. *Examination of Cases as to Trade and Labour continued.—*

(2) *Coercion of Individuals.*

The last special group consists of the cases on combinations by workmen to regulate the conditions of their labour. These cases, with few (if any) exceptions, have been instances either of combinations for purposes the combining for which was expressly prohibited by statutes now repealed, or of combinations to do what it was punishable for one man to do without combination. In so far as the cases in this group fall within either of these descriptions, they are merely examples of indictments for combination to break statutes or otherwise to commit offences—either offences the *gist* of which was defined by the statute creating them as depending on the

combination, or acts punishable when done by an individual, as the case may be. In either kind the combination was criminal at common law in the sense already described—the sense in which any combination to commit any offence is said to be criminal at common law, although the offence was created by statute; namely, that the indictment need not conclude *contra formam statuti*, and that the design need not have been completely executed, and that the punishment does not depend on the statute.

But there are cases in which it is suggested that some combinations of the kind in question are indictable at common law in another sense, neither as agreements for a combination expressly prohibited by a statute, nor as combinations to do what would be punishable if done by one man, but as being substantive crimes at common law, in the same sense in which thefts always were crimes at common law, or in which it has become established that combinations to defraud may be crimes at common law although the proposed fraud is not such as would be punishable in an individual. It seems at one period of the present century to have been doubted by some judges whether all combinations of workmen for altering the conditions of labour were not criminal at common law in this sense. But this doubt appears to have been based on the doctrine of restraint of trade, and it may probably now be disregarded. Again, in cases of the present century some authority will be found for the view that combinations for the purpose of coercing a workman in respect of his freedom of industry, or a master in respect of the management of his business, may be criminal at common law in the same sense, although the coercion was to be of that negative kind which consists in the mere combined abstention from work without breach of contract and without any express threat or intimation of the purpose by word or positive act to the workman or master. The only decision of a superior court which appears at all to favour this view is the decision of the K. B. in the case of *Walsby v. Anley* (1861), where the question was whether a threat of a strike against non-unionists could be a "threat" within the meaning of the now repealed act 6 Geo. 4, c. 120. The court seem to have thought that "threat" must mean a threat of something "illegal," and that a strike (not in breach of contract) for the purpose of compelling the discharge of the non-unionists would be sufficiently "illegal" to bring the threat of it within the statute. Crompton, J., who appears to have thought that all strikes were criminal, said that such a strike would be criminal at common law, and Hill, J., seems to have adopted the same view. Cockburn, C. J., seems to have guarded himself in this case (as he did in a subsequent case—*Wood v. Bowron*, 1866) from saying that they would be criminal. The decision in *Walsby v. Anley*, that a threat of a strike might be a sufficient "threat" within the meaning of the statute, whether it proceeded on the ground of restraint of trade or on some other ground, was followed

in several subsequent cases; but in none of them does it appear to have been supposed that that case established the criminality of such a combination at common law. On the contrary, the K. B., in 1866 (*Wood v. Bowron*), said that this was still a question; in Druitt's Case (1867) Bramwell, B., said that strikes to raise, or lockouts to lower wages were lawful; and, in 1868 (*Sheridan*), Lush, J., is reported to have ruled that there was nothing criminal in a combination to enforce by strike, without intimidation, &c., the compliance by a master with arbitrary rules of a trades union. So, in an earlier case (1847. *Selsby*), Rolfe, B., had ruled that there was nothing criminal in a combination to strike for higher wages or against apprentices and non-unionists, in the absence of "intimidation," "molestation," &c. It appears, indeed, to be plain that there could not have been any occasion in *Walsby v. Anley* to hold that such a strike would be criminal; for not only had a threat, obviously not of anything criminal, been held sufficient in Perham's Case (1859) but if that had been necessary for holding a threat of a strike to be a "threat" within the meaning of the statute, it would have followed that an "intimidation," or "molestation," or "obstruction," in order to be within the statute, must be an intimidation, or molestation, or obstruction, by threat or execution of a criminal act—a construction which was never suggested, and which would have made the statute inoperative. On the whole, it is conceived that the preponderance of authority is strongly against the general view which has now been considered.

Lastly, there are some cases which appear to favour a view that a combination is criminal at common law in the sense now in question, it is for something which may perhaps be designated as active coercion of a man's freedom of industry or occupation, but which may best be indicated in the words of the cases—

1832. Bykerdike. Workmen combined under oaths to send a letter to an employer, to the effect that all his men would strike in fourteen days unless certain workmen were discharged. Patteson, J., is said to have told the jury that the statute 6 Geo. 4, c. 129, "never meant to empower workmen to meet and combine for the purpose of dictating to the master whom he should employ; and that this compulsion was clearly illegal."

[The report of this case is brief and ambiguous. It cannot be clearly determined whether any reference to common law was meant. The first count seems to have been intended to be framed on the statute; but since Rowland's Case (1851), both counts are questionable. The case seems to be reported only for a point of pleading.]

1867. Druitt. Workmen on strike for higher wages combined to prevent other men from going to work, by picketing the works and by molestations. Bramwell, B., is reported to have ruled, that, even independently of the statute 6 Geo. 4, c. 129 (on which fifteen counts of the indictment were framed), that "if any set of men agreed among themselves to coerce that liberty of mind and thought [S. C., "the liberty of a man's liberty of mind and will to say how he should bestow himself and his means, his talents and his industry"] by compulsion and restraint, they would be guilty of a criminal offence, namely, that of conspiring against the liberty of mind and free-

dom of will of those towards whom they so conducted themselves. He was referring to coercion or compulsion—something that was unpleasant and annoying to the mind operated upon ; and he laid it down as clear and undoubted law, that if two or more persons agreed that they would by such means co-operate together against that liberty, they would be guilty of an indictable offence. The public had an interest in the way in which a man disposed of his industry and capital ; and if two or more persons conspired by threats, intimidation or molestation to deter or influence him in the way in which he should employ his industry or his talents or his capital, they would be guilty of a criminal offence. That was the common law of the land, and it had been, in his opinion, re-enacted by an act of parliament," (6 Geo. 4, c. 129). The learned judge added, that in his opinion it was "impossible to have an effectual system of picketing without being guilty of that alarm and intimidation and obstruction which is a breach of the law."

1872. Bunn. This case occurred after the passing of the 34 & 35 Vict. c. 32, which repealed the 6 Geo. 4, c. 129 and substituted new provisions respecting violence, threats, molestation and obstruction. Here the combination appears to have been to compel a master, by means of a strike, to take back a discharged workman. The strike was on the part of the defendants, and of some of the other men who struck, a breach of written contracts. The case appears not yet to have been reported in any of the law reports. According to such reports as have been published, it appears that no facts amounting to any offence within the 34 & 35 Vict. c. 32, were established ; but that the circumstances of the case in respect of the master's known engagements, and of the inconvenience which must result to the public from the interruption of his business (the manufacture of gas for the service of a part of the metropolis), were such that a strike, or threat of a strike in breach of contract, must have an extraordinary coercive effect upon him. The learned judge is stated to have told the jury, in substance, that the indictment charged a criminal combination in two forms. The first was a combination to force "the company to conduct the business of the company contrary to their will by an improper threat or molestation. There would be improper molestation if there was anything done to cause annoyance or in the way of unjustifiable interference, which in the judgment of the jury would have the effect of annoying or interfering with the minds of ordinary persons carrying on such a business as that of a gas company. It was enough if they thought there was molestation intended and agreed upon with an improper intent which in their judgment would be an annoyance and an unjustifiable interference with the business and have a deterring effect on the minds of Mr. Trewby and the company." The second was a combination to hinder or prevent the company, by simultaneous breach of contract, from carrying on their business. The jury acquitted the defendants on the counts for combination of the former kind, but convicted them on the counts for combination of the second kind.

Against these two rulings (g) (or three, if Bykerdike's Case is to be so understood) are to be set Selsby's Case in 1847, in which Rolfe, B. (Lord Cranworth) seems to have ruled that there was no common law on the subject, and that a strike for higher wages or against apprentices and non-unionists was lawful, unless violence, threats, molestations, &c., within the meaning of the statute were used;—Sheridan's Case in 1868, in which Lush, J., is said (in a newspaper report) to have ruled that there was nothing unlawful either in a strike for compelling a master to comply with certain regulations, or in informing him of the object of the strike or in picketing his premises, so long as there was no

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(g) There are expressions somewhat similar in 1851. Hewitt.

violence or intimidation, &c. (h);—and Shepherd's Case in 1869, in which the same judge ruled that a combination to strike for wages and to picket premises was not criminal, and distinguished Druitt's Case on the ground that there the defendants “abused their fellow workmen, shouted and hooted at them, and were otherwise violent in their conduct.”

It is to be regretted that neither in Druitt's Case nor in Bunn's Case was there any apparent opportunity of obtaining a confirmation or explanation of the rules laid down for the guidance of the jury by appeal on a case reserved for the Court of Criminal Appeal. In Druitt's Case all the defendants, except one who had committed an assault, were discharged on their own recognizances, and they therefore had no motive to appeal. In Bunn's Case the same result followed from the acquittal on the charges to which the reported ruling, in so far as it is now in question, applied. It therefore becomes necessary further to consider the doctrine, that a combination to coerce a man's freedom in respect of the bestowal of his industry or capital, by means which would not be punishable apart from combination, is a criminal conspiracy “at common law,” (i).

[1200—1600.] Firstly, with respect to the period from the commencement of our legal history down to 1600, there appears to be no evidence of the existence of this doctrine; and it seems even to be demonstrable that the doctrine cannot have then existed, for it was only in the Poulterers' Case (1611), or in the glosses afterwards put upon that case, that the general principle was discovered that a combination to commit even a crime was criminal; and the conclusion, that a combination for acts not criminal was not indictable as a combination by the old common law, not only seems to follow from that fact, but appears to be directly proved by the case in 1351 (Anon.). Moreover, the ancient acts relating to combinations of workmen (1360, 34 Edw. 3, c. 9; 1423, 3 Hen. 6, c. 1; 1548, 2 & 3 Edw. 6, c. 15) contain no indication that they are declaratory; nor do they appear ever to have been so regarded, even by Lord Coke (see e.g. 3 Inst. 99.) Nor does any of them contain any provision against coercion of masters or workmen: and their purview appears to be limited to the prevention of increase of wages, whether by nominal increase or by reduction of hours. Lastly, in none of the books before 1600 does there appear to be any title or mention of combinations or confederacies relating to workmen or to trade except references to these statutes. Ashe's Index to the Common Law (1614) contains the head “How Con-

(h) This ruling is not inconsistent with the cases of Rowlands and of Duffield in 1851, in which it was ruled, that striking, or procuring men to strike in breach of contract, was a “molestation” within the statute. There the breach of contract was a breach of a penal act (4 Geo. 4, c. 34).

(i.) The question here is, whether and in what sense the doctrine now forms a part of the existing law; and not whether it ought to form a part of the criminal law.

spiracies and Confederacies used and made between Artificers or, &c., to sell their Wares or Merchandise, &c., shall be punished. See tit. Statutes, 606, and Bakers, 2,—both which references are to the 2 & 3 Edw. 6, c. 15. His title "Labourers" consists of thirteen columns of references arranged under various heads, none of which have any bearing on this question. Lastly, Pulton, writing in 1610, dilates at length on threats and oppressions, but all his observations on threats refer to menaces of breach of the peace, and none of his "oppressions" have reference to any kind of combination, excepting riot.

[1600—1700.] Secondly, with respect to the 17th century, it may be said, that notwithstanding the great extension of the criminal law in that period, firstly by the Star Chamber and afterwards by the courts of common law, there is no evidence of the existence then of the doctrine in question. The only precedents of that century of a proceeding by way of indictment for conspiracy for offences relating to trade or labour relate to prices (West's Symb. 2, 98, A.D. 1641; Anon. 1698); and of these the former concludes *contra formam statutorum*; sc. 25 Hen. 8, c. 2; 2 & 3 Edw. 6, c. 15.

[1700—1824.] In a third period may conveniently be comprehended the interval between 1700 and 1824—the year in which the Combination Acts were first repealed. The sources to be consulted for this period consist of (i) cases, (ii) precedents; (iii) text books, and (iv) the statutes. (i) The cases before the act 39 & 40 Geo. 3, c. 109, with the exception of Eccles' Case, consist exclusively of cases of indictments for or expressions relating to combinations to raise wages—combinations which were then doubly criminal, firstly, as being in violation of the general statute 2 & 3 Edw. 6, c. 15, against combinations for raising wages; and, secondly, as being in violation of the statutes, such as 1 Jac. 1, c. 6, for the regulation of wages by justices; and sometimes further criminal by special laws to the same effect for governing particular trades. The cases are as follow:—

1721. Journeyman Tailors of Cambridge. The tailors were indicted for combining to raise their wages. It was objected that the indictment ought to have concluded *contra formam statuti*, since it depended on 7 Geo. 3, c. 13, which provided for the punishment of tailors for making agreements to advance their wages. It appears to have been admitted by the counsel for the crown that the offence consisted in combining to demand wages in excess of those allowed by the act (—“tis true, it doth not appear by the record, that the wages demanded were excessive, but that is not material, because it may be given in evidence”); but they contended that the gist was in the conspiracy, and so the crime charged was a crime at common law; a contention which was in accordance with the Poulterers' Case (1611) and with Best's Case (1705), and which did not involve that the combination would have been criminal if it had not been for a purpose criminal apart from combination. The court held, in accordance with the former authorities, that the indictment need not conclude *contra formam statuti*; and they are made to add that “a conspiracy of any kind is illegal, tho' the matter about which they conspired might

have been lawful for them or any of them to do, if they had not conspired to do it; and this appeared in the case of the tub-women against the brewers of London." This general expression was in no way necessary for the decision; it is not supported by its reference (1665. Starling, see *sup.* § 7); and it amounts to the proposition, which is negatived by every previous and subsequent authority, that combination is *per se* criminal, independently of its purposes. Moreover, that the report is untrustworthy appears from the fact that the reporter makes the arguments as to a case at Cambridge turn on the 7 Geo. 1, c. 13, which did not apply to Cambridge, but only to the metropolis.

1783. Eccles. This case has already been considered above, § 12; and it appears not to bear on the present question.

1796. Mawbey. The indictment was against justices for attempting to pervert justice and influence the Court of King's Bench by false certificates. Grose, J., said, "In many cases an agreement to do a certain thing has been considered as the subject of an indictment for a conspiracy, though the same act, if done separately by each individual without any agreement among themselves, would not have been illegal. As in the case of journeymen conspiring to raise their wages: each may insist on raising his wages, if he can; but if several meet for the same purpose, it is illegal, and the parties may be indicted for a conspiracy."

[These expressions were not necessary for a decision upon an indictment for a combination to pervert justice. Crompton, J., several times cited them with approval. Lord Campbell, C. J., in 1856, Hilton v. Eckersley, ranked them with other "loose expressions" which he disapproved. Sir W. Erle, in his Memorandum on Trades Unions, Rep. App. lxxvi, says, that so far as the dictum related to wages, "it was relevant only for the purpose of establishing that the guilt of conspiracy is complete by the agreement;" and with reference to the more general part of this dictum, and to the dictum in the Tailors of Cambridge Case, he says, "The dicta in the two last cases, that acts lawful for one may become indictable if more than one combine to commit them, were not pertinent to the adjudication then being made. The judges do not refer to examples, and although the proposition may be true of cases where simultaneity is the essence of the criminality of the act, I cannot discover any other cases in which it would be true."]

1799. Hammond. Journeymen shoemakers were convicted of a combination to raise wages; and Lord Kenyon said, that not only was such a combination by men indictable, but it would be indictable in the masters to agree to *raise* wages. It seems impossible but that such an observation must have referred to the statutory prohibitions (5 Eliz. c. 4; 8 Geo. 3, c. 17, &c.) of the payment by masters of higher wages than those fixed by the justices—prohibitions which were not repealed until 1813.

1804. Salter. Indictment framed on 39 & 40 Geo. 3, c. 106, for conspiring to compel a master to discharge a workman by striking in breach of contract. Nothing appears as to common law.

1819. Ferguson. Indictment framed on 39 & 40 Geo. 3, c. 106, for conspiring to strike against employment of apprentices. Nothing appears as to common law.

The doctrine in question does not appear to be asserted or involved in any of these cases, unless in so far as it may be included in the general dicta attributed to the judges in the Tailors' Case and in Mawbey's Case. Next (ii) are the precedents. In Wentworth's Pleadings, published in 1797, the precedents bearing on this question, with one exception, can be traced to and follow the language of statutes; and that one appears to follow the language of some statute which has not been found.

1760. 4 Wentw. p. 103: combination by journeymen tailors in London to raise wages and lessen hours contrary to the orders of the justices. (7 Geo. 1, c. 13.)
1782. Ib. p. 100: by journeymen leather dressers against apprentices. (22 Geo. 2, c. 27, s. 12; 12 Geo. 1, c. 34.)
1787. Ib. p. 113: by smiths to lessen hours. (22 Geo. 2, c. 27, s. 12; 12 Geo. 1, c. 34.)
1792. Ib. p. 120: by curriers to raise wages. (22 Geo. 2, c. 27, s. 12; 12 Geo. 1, c. 34.)
1793. 6 Wentw. p. 375: by journeymen lamplighters to raise wages. (This precedent appears to follow the language of some statute, though the statute has not been found. The general Acts, 1 Jac. 1, c. 6, or 2 & 3 Edw. 6, c. 15, may have been relied on.)

Other similar precedents which can equally be traced to statutes which they follow, but do not mention, will be found in other later collections. (Dickenson, Q. S.; Chitty, Cr. L.; Cro. Cir. C.) There are two to which no statute seems to apply, viz., an indictment against master-shoemakers for conspiring not to employ journeymen who had left their last masters without their consent (Dick. Q. S. 283 or 341); and an indictment (3 Chit. Cr. L. 1169) against master-ropemakers for the like offence. (The dates of these two precedents are not given; but since they are not included in Wentworth, they are probably of a later date than 1797. The latter is said to be "from the MS. of a gentleman at the bar.") The editors of some of these collections prefix the description "at common law" to most of the precedents, apparently in the sense that they understand the combinations to be indictable irrespectively of the statutes; but this can hardly countervail the fact that, with few exceptions, the precedents are confined to cases met by statutes, and follow the language of statutes; and it is easy to understand how the established practice that indictments for conspiracy do not conclude *contra formam statuti* even when they are founded on statutes may have led to the impression that the criminality was independent of the statutes. No case or precedent of an indictment for controlling a master appears until 1780, i. e. until statutes expressly directed against combinations for this purpose had been in force for fifty-five years (12 Geo. 1, c. 34, &c.).

The text books (iii) down to at least 1800 appear to be silent as to the existence of any doctrine of the criminality at common law of combinations of masters or workmen. Neither in the earlier editions of Hawkins nor in East does the doctrine in question appear to be stated. So in the edition of Burn's Justice of 1810, it is not mentioned under the title "Conspiracy;" and under the title "Servants," there are several statements of the statutes against combination, but there is no reference to common law. Lastly (iv) the various acts against combinations for controlling masters or workmen which were passed in the 18th century (1725. 12 Geo. 1, c. 34, extended by 1729. 22 Geo. 2, c. 27, s. 12; 1799. 39 Geo. 3, c. 81; 1800. 39 & 40 Geo. 3, c. 106, &c.) commence by declaring or enacting agreements for such purposes theretofore made to be "illegal,

null and void;" which would not have been necessary if they had been thought to be criminal at common law; and they then proceed by independent enactments to make it punishable for the future to engage in them.

The result of the whole appears to be that there is not sufficient authority for concluding that before the close of the 18th century there was supposed to be any rule of common law that combinations for controlling masters or workmen were criminal, except where the combination was for some purpose punishable under a statute expressly directed against such combinations, or was for conduct punishable independently of combination. If such a rule is established by the cases decided since the passing in 1825 of the 6 Geo. 4, c. 129, which have been above considered, this would seem to be a modern instance of the growth of a crime at common law by reflection from statutes, and of its survival after the repeal of those statutes, somewhat in the same manner in which combinations for certain kinds of frauds continued to be criminal after those frauds had ceased to be punishable apart from combination.

The Select Committee of the House of Commons in 1824, on the Bill for the Act 5 Geo. 4, c. 95, appear to have thought that combinations of workmen were generally criminal at common law; and they embodied their opinion in provisions repealing the supposed common law. They further repealed, amongst other acts, the 33 Edw. 1, so far as it related to combinations or conspiracies of workmen or other persons to obtain an advance of, or to fix, the rate of wages, &c.—a subject to which that ordinance does not appear to have had, or to have been previously supposed to have had, any relation. The Act of 1824 was repealed by the Act of 1825, 6 Geo. 4, c. 129, which repeats the repeal of 33 Edw. 1, as above.

It seems not impossible that the opinion of the Select Committee may have been founded partly on some decisions in the Scotch Courts on the Common Law of Scotland, which are printed in the Report of the Select Committee (H. C.) of 1824 on Artisans and Machinery (see as to these decisions, and the principle of Scotch law on which they rest, *inf. Sect. III. § 16*); partly, perhaps, on the facts that the precedents do not conclude *contra formam statuti*, and on the general rule that a criminal conspiracy is always described as a crime at common law: a rule which, as has been seen, has nothing to do with the question whether the ground of criminality is a statute or is the common law, and which merely means that assuming the purpose to be sufficiently criminal, whether by statute or by common law, the combination for it may be charged, tried and punished without reference to the statute or law which constitutes the ground of the criminality of the combination.

In the consideration of the criminality of such combinations as those which have lastly been discussed, it must be remembered that there is no intrinsic efficacy in the word "conspiracy," or in the word "confederacy," or in the word "combination." "Conspire" [Lord Campbell said in Hamp's Case, 1852] "is nothing; agreement is the thing." Again, in all the more recent cases, it has been uniformly recognised that a lock-out or a strike, whether for higher wages or against an obnoxious workman, or against refusal to conform to regulations, is not *per se* any offence. (1866. *Shelbourne v. Oliver*; 1866. *Wood v. Bowron*; 1867. *Druitt and Bailey*; 1868. *Sheridan*; 1869. *Shepherd*; 1869. *Farrer v. Close*.)

Yet the very meaning of a strike is a combination to cause a master or workman to act in his business or employment in a manner in which he does not wish to act; that is, to coerce him. At what point, then, does the illegality arise? Since the abolition in 1871 of restraint of trade as a possible ground of criminality, the object is not unlawful in any sense, apart from the means to be used, for it is not otherwise unlawful in itself to persuade a master to conform to rules or not to employ apprentices. Next, as to the means. "Coercion" in itself imports nothing objectionable, for, as has been held with respect to "intimidation," "molestation," and "obstruction" (1844. O'Connell in D. P., 1846. Frost v. Lloyd, 9 Q. B. 130; 1851. Rowlands, in *arg. in Q. B.*), such words are not terms of art, and they are consistent with either legality or illegality in the conduct to which they refer. A strike is admitted not to be in itself criminal; nor in the absence of breach of contract is it a civil wrong. If therefore the agreement to strike is the unlawful element, it would seem that it must be so in the sense in which agreements in restraint of trade were unlawful: but by the Act of 1871 that ground is taken away. The only other ground on which a strike has been suggested to be unlawful in this sense is that it is used for coercion in trade or labour: but coercion itself is a neutral word, and imports nothing objectionable apart from the particular means by which it is to be exercised; and it therefore cannot be brought in aid of the unlawfulness of these means. An agreement therefore of the kind here suggested seems not to satisfy that preliminary condition of unlawfulness either in the end or in the means proposed (*k*), which, according to the authorities on cases of combinations to defraud must be satisfied, at least in matters not directly of a public nature, before any question of criminality arises.

The same reasoning applies to an agreement for the mere intimation of an intended strike, and this indeed seems to have been several times admitted to be lawful: and even if it is to be made in a dictatorial or minatory manner, it is difficult to see how this, apart from the repealed statute, and from the doctrine of restraint of trade, can make any difference; for if the master threatened is not unlawful, and the object is not unlawful, to hold the threat of it unlawful would be opposed to those cases in which it has been held that there must be not only a minatory manner but also unlawful matter. Nor, if neither the object nor the manner, nor the form of the threat, is unlawful, does it seem that it can be made unlawful by reason of the magnitude of the interest involved and the consequent efficacy of the threat. The same principles appear to apply to mere disagreeable names, black looks or other mere annoyances (*l*). There is no intelligible sense in which these things can be called unlawful in themselves apart from statutes, and to say that they

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(*k*) See *inf.* § 14.

(4727)

(*l*) See *sup.*

are unlawful because they are used for coercion, seems to amount to saying that the means receive a character of unlawfulness from that which depends for its own unlawfulness on them.

It is conceived that the provisions of the Act of 1871 confirm the view here suggested. The legislature must be supposed to have been aware that the law of criminal agreements relating to trade had at least commonly followed the statutes against trade molestations, and it seems reasonable to infer that the list of trade offences which is included in the statute 34 & 35 Vict. c. 32, was intended to embody all the matters which it was thought proper to make the subjects of a special criminal law relating to the disposal of capital and industry, and for which provision was not made in other acts relating to employers and workmen.

Where however the agreement is for conduct involving a breach of contract by workmen, different considerations occur. Acts have been for many years in force for punishing breaches of contract by workmen of most kinds, and an agreement to break those acts, or to procure a breach of them, may be criminal on the general principle established in the 17th century. A difficulty may indeed occur at the present time from the fact that "The Master and Servant Act, 1867," appears to suspend the provisions of most of the former acts for punishing breaches of contract, and to substitute the discretion of a magistrate as to whether the wrong ought to be regarded as criminal or as merely civil, so that a breach of contract may be thought to be of an indeterminate character, both when it is proposed and when it is executed; nor does there seem to be any case in which the effect of this condition of the law has been considered in its relation to combinations. Either view of its effect is attended with difficulty. On the one hand the provisions of the 19th section, which expressly preserves the procedure by indictment in cases of malicious injury to person or property, may perhaps raise some presumption that procedure by indictment was intended to be excluded in the case of other kinds of misconduct within the purview of the statutes whose penal clauses are suspended. On the other hand it seems unlikely that the legislature should have intended to relieve without express words from the criminality which has long attached to agreements for breaches of contract where those breaches were in violation of penal acts.

Agreements for breaches of contracts of service in cases to which no penal act applies seem never to have been determined to be criminal. In Rowlands' and Duffield's Cases (1851), and apparently in all the other cases, the contracts, the breaking or the procuring the breach of which was ruled or held to be a "molestation" within the statute 6 Geo. 4, c. 129, were within the purview of penal acts; and in Rowlands' Case the Q. B., without pronouncing a final opinion, thought the following counts for conspiracy "too vague":—

16th. Unlawfully to intimidate, prejudice and oppress one R. P. and one G.  
(4728)

P. in their trade and occupation as manufacturers of, &c., and to prevent the workmen of R. P. and G. P. from continuing to work for R. P. and G. P. in their said trade and occupation.

17th. By divers subtle means and devices and wicked arts and practices, to injure and oppress R. P. and G. P. in their trade, business and occupation of manufacturers of, &c., and to induce the workmen of R. P. and G. P. to depart from their hiring, employment and work with R. P. and G. P. before the period of their agreement with R. P. and G. P. was completed.

19th. Unlawfully to intimidate, prejudice and oppress R. P. and G. P. in their trade and occupation of manufacturers of, &c., and to entice and seduce away the workmen of R. P. and G. P. from the employment of R. P. and G. P., and thereby to injure and oppress R. P. and G. P. in their said trade and occupation.

After consideration, Lord Campbell, C. J., *pro cur.*, said, "With respect to the indictment, we all agree in thinking that the 16th, 17th and 19th counts are open to objection as being too vague. We give no final opinion; but on these counts there will be a rule *nisi* to arrest judgment, unless a *nolle prosequi* be entered." The other counts were directly framed either on the 4 Geo. 4, c. 34, or on the 6 Geo. 4, c. 129.

And the opinion of the court seems to have been partly founded on the rule for which the cases of Daniel (1704) and Callingwood (1705) are commonly cited, that indictment does not lie against one for enticing away a servant or apprentice. (Cp. 1853, Lumley *v.* Gye. There is a precedent in West, 2, 269, of an indictment against one for being a *common* procurer of servants to depart from their services.)

The following are cases on the subjects of this and of the preceding subsection:—

- 1354. Art. of Inq.: recital of a statute against combination by merchants. 27 Edw. 3, stat. 2, c. 3.
- 1369. The Lombard: indictment of one (not by way of conspiracy) for disturbing prices. 3 Edw. 3, stat. 2, c. 3; 37 Edw. 3, c. 5.
- 1597. Anon.: Combination for forestalling. 37 Edw. 3, c. 5; 25 Hen. 8, c. 2.
- 1636. Midwinter: Disturbance of markets. 37 Edw. 3, c. 5, &c.
- 1698. Anon.: Combination by manufacturers to raise prices. 37 Edw. 3, c. 5.
- 1721. Journeymen Tailors of Cambridge: to raise wages. 2 & 3 Edw. 6, c. 15; 1 Jac. 1, c. 6; Qu. 7 Geo. 1, c. 13.
- 1758. Norris: to raise prices of salt. 37 Edw. 3, c. 5; 25 Hen. 8, c. 2; 2 & 3 Edw. 6, c. 15.
- 1783. Eccles: to prevent a tailor from carrying on his trade. (Qu.)
- 1796. Mawbey: *Dict.* of Grose, J.
- 1799. Hammond: to raise wages. 2 & 3 Edw. 6, c. 15; 5 Eliz. c. 4; 8 Geo. 3, c. 17.
- 1802. Marks: unlawful oath by trades unionists. 37 Geo. 3, c. 123; 2 & 3 Edw. 6, c. 15.
- 1804. Salter: combination to prevent master from employing a workman. 39 & 40 Geo. 3, c. 106.
- 1805. Nield: summary conviction. 39 & 40 Geo. 3, c. 106.
- 1818. Hilbers: combination to engross, raise prices, &c. 25 Edw. 3, stat. 3; 37 Edw. 3, c. 5.
- 1819. Ferguson: to strike in breach of contract against apprentices. 39 & 40 Geo. 3, c. 106.
- 1822. Ridgway: summary conviction. 39 & 40 Geo. 3, c. 106.

1832. Bykerdike: combination to compel discharge of workmen by threat of strike. (*Qu.* on 6 Geo. 4, c. 129.)  
 1834. Ball: unlawful oath by trades unionists. 37 Geo. 3, c. 123; 39 Geo. 3, c. 79.  
 1834. Lovelass: unlawful oath by trades unionists. 37 Geo. 3, c. 123, 39 Geo. 3, c. 79; 57 Geo. 3, c. 19.  
 1834. Dixon: S. P.  
 1842. Harris: charge of Tindal, C. J. 6 Geo. 4, c. 129.  
 1847. Selsby: combination against apprentices and non-unionists and for picketing. 6 Geo. 4, c. 129.  
 1851. Hewitt: Strike against a workman. 6 Geo. 4, c. 129.  
 1851. Rowlands: } strike in breach of contract to raise wages. 4 Geo.  
 1851. Duffield: } 4, c. 34; 6 Geo. 4, c. 129.  
 1856. Hilton v. Eckersley: bond in restraint of trade.  
 1859. Perham: summary conviction for threat. 6 Geo. 4, c. 129.  
 1861. Walsby v. Anley: summary conviction for threat of strike. 6 Geo. 4, c. 129.  
 1863. O'Neill v. Longman: summary conviction for threat. 6 Geo. 4, c. 129.  
 1863. O'Neill v. Kruger: summary conviction for threat. 6 Geo. 4, c. 129.  
 1866. Shelbourne v. Oliver: summary conviction for threat of strike. 6 Geo. 4, c. 129.  
 1866. Wood v. Bowron: summary conviction for threat. 6 Geo. 4, c. 129.  
 1867. Skinner: summary conviction for threat. 6 Geo. 4, c. 129.  
 1867. Druitt: } combination to molest workmen. 6 Geo. 4, c. 129. (See  
 1867. Bailey: } as to common law.)  
 1867. Hornby v. Close: restraint of trade.  
 1868. Springhead Co. v. Riley: injunction. Malins, V.C. 6 Geo. 4, c. 129.  
 1868. Sheridan: combination to enforce rules. 6 Geo. 4, c. 129.  
 1869. Shepherd: combination to molest workmen. 6 Geo. 4, c. 129.  
 1869. Farrer v. Close: restraint of trade.  
 1872. Bunn: combination to coerce a master in his business.
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#### § 14. Summary of this Section—Lord Denman's Antithesis.

It is conceived that on a review of all the decisions there is a great preponderance of authority in favour of the proposition that, as a rule, an agreement or combination is not criminal unless it be for acts or omissions (whether as "ends" or as "means") which would be criminal apart from agreement (see esp. 1725. Edwards; 1788. Fowler; 1811. Turner; 1834. Seward); and that the modern law of conspiracy is in truth merely an extension of the law of attempts, the act of agreement for the criminal purpose being substituted for an actual attempt as the overt act. It has been seen by what steps a beneficial exception has established itself in the case of agreements to defraud, and how the ancient crime of conspiracy, properly so called, has been extended to charges of any kind of crime made for purposes of extortion. Probably also in the case of agreements "directly of a public nature and leveled at the government," and perhaps in the case of agreements to pervert or defeat justice, the law of criminal combination has gone somewhat beyond the

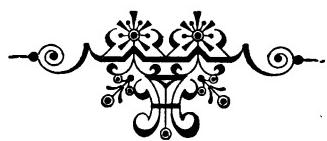
bounds of the ordinary criminal law. In the case of agreements to injure private persons, the balance of decisions seems to incline against any such extension, though expressions of opinion occur in favour of the possibility of such an extension in cases still to be defined. In the case of agreements to coerce a master or workmen in the conduct of his business or in the disposal of his industry, there seems to be recent authority in favour of such an extension, but it has not yet been placed beyond doubt by number of cases or by the authority of the court of appeal; and it has been seen that there is much difficulty in finding authority for such an extension in the common law before the present century.

Expressions of great apparent generality, as to the criminality of combinations in cases not within any of these particular lines of extension, occur in some of the reports; but they will be found nearly always to have been used with reference either to cheats or to the perpetually recurring question, what is the gist of a conspiracy for purposes of pleading, and to have had for the most part a totally different meaning from that which they seem to import when they are cited apart from their context. Especially is this true of the so-called definition of conspiracy, that it consists in the combination for accomplishing an unlawful end, or a lawful end by unlawful means. That antithesis was invented by Lord Denman, in Jones' Case (1832) (*m*), to express the very opposite of that for which it is sometimes cited. The indictment was for a combination to cheat by removing the goods of a person against whom a commission of bankruptcy had issued; but it did not show that the commission was valid. It was contended for the crown that the mere purpose to defraud sufficed; but the K. B. held that even in the case of a combination to defraud, in which it is admitted to be unnecessary to show a purpose to effect an object or to use means which would be criminal apart from combination, it was yet necessary that there should have been an intention to do some act amounting to at least a civil wrong:—"the indictment ought to charge a conspiracy either to do an unlawful act or a lawful act by unlawful means. Here the indictment charges a conspiracy to remove and conceal the goods of Jones; but if the commission was bad, Jones had a right to remove them." So in Richardson's Case (1834), where the same question occurred, with the substitution of an order for immediate execution instead of the commission of bankrupt, the same point was ruled in the same sense by the same judge. The antithesis is next used in Seward's Case (1834) by the same judge in the K. B. for the same purpose, and in this instance "unlawful" seems to be used in the sense of "criminal." In 1839 (Peck), when Lord Denman's own phrase was attempted to be used

(m) Some earlier traces of a similar mode of expression may be found, e. g. in 1814. De Berenger, and 1 East, P. C. 462 (where East's observations must be separated from the case to which they are appended).

Case (1663), the "illegal thing" proposed was the commission of a crime of conspiracy, properly so called. So in Thorp's Case (1697) (if that can be regarded a case of conspiracy), the question made by the court was whether any act indictable in itself had been done. (Cp. as to the sense in which "unlawful purpose" and "unlawful act" were used in the older law of murder—1701. Plummer, Kel. 109: 1696. Keite, 1 Ld. Raym. 138 (correcting Coke, 3 Inst., 56, 57): 1727. Oneby, 2 Ld. Raym. 1485: Fost. P. C. 258, 259.) It is believed that the only early authority for a more extended doctrine is the expression in the *Termes de la Ley*, tit. Confederacy, where it is said that "confederacy est quant deux ou plusors luy mesmes confederer de faire ascune male ou damage al auter; ou de faire ascune chose illoyal." But that this passage has no authority, in so far as it goes beyond the Poulterers' Case, appears from the fact that every other expression in the title is taken directly from the Poulterers' Case. See the note at foot of p. 7, § 1, *sup.*, as to the earlier editions of the book.

See, in modern times, 1856, Hilton *v.* Eckersley, by Lord Campbell, C. J., and Sir W. Erle's Memorandum on the Law of Trades Unions: Rep. of Comm., App. p. lxxvi., for disapproval of the general expressions used in some of the cases since the 17th century. Some dicta of almost equal generality will be found in later cases; e. g. by Crompton, J., in 1861, Walsby *v.* Anley; but most of them will be found, as has been already stated, to have been used, as in Kenrick's Case (1843), with reference to questions of pleading, especially in cases of cheats. Nor perhaps does the law depend on the balancing of expressions of this kind.



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## SECTION III.

THE ACT OF COMBINATION.

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**§ 15. *The Act of Combination.***

EVERY crime consists of a state of intentionality—some form of intention or of carelessness—and an overt act or an omission to perform a duty. The kinds of intention, a combination for which may be criminal, have now been discussed, and it remains to consider what overt act will suffice.

In the earlier periods of the history of English law it was thought essential for conspiracy (properly so called) that the purposes of the combination should have been so far executed as that the person against whom the conspiracy was directed should have been actually indicted and put in peril. But it was held in 1354 (Anon.) in a case of combination for maintenance, that it was not essential that any suit should have been actually maintained; and in 1574 (Sydenham), in a case of conspiracy proper, that indictment would lie, although the grand jury had ignored the bill against the prosecutor; and the Poulterers' Case established or gave rise to the doctrine that the combination for any crime was punishable, although the purpose had not been commenced to be put in execution otherwise than by the act of agreement itself; and although this rule was at first occasionally doubted (*e. g.* Daniell, 1704; Spragg, 1760), it has long been established that no overt act is in general necessary in conspiracy beyond the agreement itself. This doctrine was applied to treason-felony in Mulcahy's Case (1868), which contains a history of the growth of the rule in its application to treason.

Little is to be found in the books with respect to what conduct will amount to an act of agreement for the purposes of the law of conspiracy. It is clear that, generally speaking, there need not be any actual meeting or consultation, and that the agreement is to be inferred from acts furnishing a presumption of a common design. In Cope's Case (1719) it was ruled that an agreement between members of a cardmaker's family to procure a rival's apprentice to spoil his master's cards might be inferred from proof that each had separately given money to the apprentice in order to bribe him to spoil the cards; but stress seems to have been laid

on the fact of the defendants "being all of a family and concerned in the making of cards." In Parson's Case (1763) it was held that "there was no occasion to prove the actual fact of conspiring, but that it might be collected from collateral circumstances." In Leigh's Case (1775) it was ruled that an agreement to hiss an actor (or rather, perhaps, to raise a riot in a theatre) might be inferred from the acts done at one time and place, and that it was not necessary that the defendants should have come together for that purpose or have previously consulted together. So in a case of prison-breach (1793), it was ruled that concurrence in doing the act sufficed without previous acquaintance. So in Brisacs' Case (1803), it was held that "conspiracy is a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them." In Pollman's Case (1809), it was ruled that a banker with whom money was deposited, for a criminal purpose of which he was aware, might be implicated. In Murphy's Case (1837), Coleridge, J., told the jury—

"If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in conspiracy to effect that object. The question you have to ask yourselves is: Had they this common design, and did they purpose it by these common means? . . . It is not necessary that it should be proved that these defendants met to concoct this scheme, nor is it necessary that they should have originated it. If a conspiracy is already formed, and a person joins in it afterwards, he is equally guilty. . . . If you are satisfied that there was concert between them, I am bound to say that, being convinced of the conspiracy, it is not necessary that you should find both M. and D. doing each particular act, as after the fact of a conspiracy is once established in your minds, whatever is either said or done by either of the defendants in pursuance of the common design is, both in law and in common sense, to be considered as the act of both."

On the other hand, in Pywell's Case (1816), Lord Ellenborough ruled (so far as can be gathered from the report), that where one person put a fraud in course of execution, and another, who knew of his design, but who acted without any concert with or assent by the first person, aided the fraud, the two could not be convicted of conspiracy. In Barry's Case (1865) it was ruled to be not enough to effect a defendant that he knew of the fraud after it was done:—"the parties must put their heads together to do it."

For the rest, there seems to be no reason to suppose that, unless perhaps in some forms of treason, the kind of conduct necessary for making a man a party to a conspiracy differs in any respect from that which would be necessary for making a man a party to any other sort of criminal design. If he procures, counsels, commands or abets a design of felony, he is involved in the guilt of the principal felon, though in a lower degree, if the felony is not actually committed. If he procures, counsels, commands or abets

a misdemeanor, he is guilty of a misdemeanor at common law. So there can be no doubt but that a person may involve himself in the guilt of a conspiracy by his mere assent to an encouragement of the design, although nothing may have been assigned or intended to be executed by him personally. If he joins a conspiracy already formed, he cannot in general be affected by what has been already done, except in so far as this may, in conjunction with more specific proof, indicate the nature of the purpose in which he joined; though a different rule may apply in treason, and perhaps in a conspiracy in pursuance of which a felony has been committed. If he quits a conspiracy, there is no reason to suppose that he is in general affected by any act done after he has severed himself from it, except in so far as that act may have been done in execution of the design as it stood when he was a party to it.

So with respect to evidence. There is no ground to suppose that, unless in cases of treason, there are any special principles of evidence applicable to conspiracy (1820. Hunt); though the application of those principles may be affected by the fact that in ordinary crimes a participation in an *act* has to be proved, whereas in conspiracy the question is of participation in a design. What was done before he joined, or what is done or said in his absence by other parties to the design in furtherance of the common object, may, as in the case of any other joint criminal design, be evidence of the general character of the design, subject to proof to be given for affecting him with a participation in it. But acts done or admissions made by other parties after he has ceased to have any connection with the design, or for some purpose *ultra* the common design, may be evidence against them, but will not be evidence as against him, even of the general nature of the design; unless perhaps where it can be shown that the act was done in pursuance of instructions given or arrangements made while he was a party; and even so, it is rather the instruction or arrangement which affects him, than the act done in pursuance of it. The facts in issue are, whether there was an agreement for the alleged purposes, and whether the defendant was a party to it. Evidence in support of either fact may be given first, subject to the conditions laid down in the Queen's Case (1820) for preventing unfair prejudice to a defendant. If evidence is allowed to be first given of the general matter, that is only provisionally relevant as against a particular defendant, until evidence of the second kind is given. If evidence is first given of the acts of a particular defendant, that is only provisionally relevant as against other defendants, until it is shown either from the manner in which those acts were done or otherwise, that the acts were done in pursuance of a design common to him and them.

See Rosc. Cr. Ev. by Stephen, tit. Consp.; 3 Russ. by Gr. 161, 295; 1794. Hardy; Horne Tooke; 1796. Stone; 1799. Hammond; 1803. Brisac; 1817. Waston; 1820. The Queen's Case; 1820. Hunt; 1837. Murphy; 1839. Frost;

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1840. Shellard ; 1844. Blake ; 1848. Lacey ; 1848. Brittain ; 1851. Duffield. It is not proposed here to set out the illustrations furnished by the cases on conspiracy of the application to that crime of the general rules of evidence.

It may be noted that 3 Russ. by Gr., p. 166, is sometimes cited as extracting from Lord Grey's Case (1682) the proposition that "every person concerned in any of the criminal parts of the transaction alleged as a conspiracy may be found guilty, though there be no evidence that such persons joined in concerting the plan, or that they ever met the others, and though it is probable they never did, and though some of them only join in the latter parts of the transaction, and probably did not know of the matter until some of the prior parts of the transaction were complete." No such passage occurs in Lord Grey's Case, nor does Sir W. Russell cite it as an extract from that case, nor does that case appear to have been prosecuted as a case of conspiracy. The doctrine is no doubt generally correct, but it is true of conspiracy only as it is true of other joint crimes. See at foot of p. 85, *inf.*

It is not part of the present design to consider the subjects of pleading and of procedure in conspiracy. They will be found treated in 3 Russ. by Gr. 159 *seq.* But in general it may be said that the ordinary rules of criminal pleading apply to conspiracy, with exceptions arising from the fact that the design of the conspirators need not have been executed or completely ripened in detail, and that the details consequently not only cannot be stated in all cases, but may commonly be immaterial. Thus there may be a criminal design to defraud persons of things by means not yet completely determined; and in such a case these undetermined matters must necessarily be treated as to the jurors unknown or stated generally; and this necessity has given rise to more general rules, such as that in an indictment for a conspiracy to defraud by false pretences—the false pretences, even where they are known, need not be particularly set out. The averment in the indictment of the criminal purpose must show clearly that the purpose was one for which it is criminal to agree;—by general words of art, if such exist which are applicable to the case; or by details. If the averment of the purpose fails in this, but overt acts are laid in such a mode as to show matter indictable irrespectively of the combination, the averment of conspiracy may be disregarded, and the parties may be tried for the joint offence so disclosed; but an insufficient averment of criminal purpose will not be aided by averments of overt acts not shown to be criminal independently of combination (1844. King).

Questions of great difficulty may occur with respect to jurisdiction in conspiracy. In Brisac's Case (1803) it was held, that although the agreement was made at a place out of the jurisdiction of the common law courts, it was yet triable in the ordinary criminal courts in England if an overt act in execution of it was done in England; and that an act done in England by an innocent agent of one of the conspirators was the act of the conspirators for this purpose. In Bernard's Case (1858) a question occurred whether a person could be indicted in England for having counselled in England the murder of an alien in Paris. The defendant was ac-

quitted, and the point was not determined; but in 1861 the 24 & 25 Vict. c. 100, s. 4, provided for conspiracies and other offences of this kind, not however by applying to the offenders the general clauses relating to accessories, but by a special enactment making the offence a misdemeanor. (See 1 Russ. by Gr. 760, 967.) In Kohn's Case (1864) a conspiracy was formed in England by the defendant and others for casting away a foreign ship in order to prejudice the underwriters. The ship was scuttled when out of the jurisdiction by the defendant and others, who appear all to have been foreigners. Willes, J., is reported to have told the jury that—

"The ship was a foreign ship, and she was sunk by foreigners far from the English coast, and so out of the jurisdiction of our courts. But the conspiracy in this country to commit the offence is criminal by our law. And this case does not raise the question which arose in *R. v. Bernard*, as to a conspiracy limited to a criminal offence to be committed abroad. For here, if the prisoner was party to the conspiracy at all, it was not so limited, for it was clearly contemplated that the ship might be destroyed off the bar at Ramsgate, which would be within the jurisdiction. The offence of conspiracy would be committed by any persons conspiring together to commit an unlawful act to the prejudice or injury of others, if the conspiracy was in this country, although the overt acts were abroad. . . . For the principal offence . . . the prisoner could not be indicted in this country, as he is a foreigner, and the ship was foreign and the offence was committed on the high seas."

(See as to Wakefield's Case, *inf.*, § 17, p. 63.)

It appears to be implied in Brisac's Case that a conspiracy by British subjects abroad to violate an English law is not at common law indictable in this country unless an overt act is committed here. It is not easy to collect the effect of Kohn's case with respect to conspiracies here for acts to be done abroad. If the contemplated act, when done, will not, by reason of the place and of the nationality of the actors, be punishable here, there would be much difficulty in holding criminal by our law an agreement here for doing that which when done would not be a crime against our laws. Again, suppose that aliens agree abroad to do or to procure to be done here an act which will be in violation of English law, it is clear that their agreement is so far no crime against our law. But suppose further that they procure an innocent agent to do an overt act here; or that one of them does an overt act here. Can each of them in the former case, or can those who remain abroad in the latter case, be said to have broken our law? It is conceived that our law of criminal participation or agency could not be applied in such a case. But these and similar questions appear still to await judicial determination.

The punishment of conspiracies in general is now by fine and imprisonment with or without sureties, as in the case of other common law misdemeanors. By the 14 & 15 Vict. c. 100, s. 28, hard labour may be added in the case of any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any

crime, or to obstruct, prevent, pervert or defeat the course of public justice. The misdemeanor of conspiracy to murder may, under the 24 & 25 Vict. c. 100, s. 4, be punished with penal servitude for not more than ten years, or with imprisonment for not more than two years, with or without hard labour.

The crime of conspiracy to commit a crime or offence does not merge in the crime or offence when the conspiracy is executed. (1844. O'Connell, per Lord Campbell, C. J.: 1848. *Button*.) Nor is the punishment limited to the punishment prescribed by law for the complete offence. (1851. *Rowlands*.) Nor, as it seems, does the expiration of the time limited by a statute for a prosecution for an offence against its provisions, bar a prosecution for conspiracy to commit that offence. (1851. *Thompson*.)

It seems never to have been considered whether the ancient exception from the law of conspiracy, properly so called, of grand jurors or other persons acting under colour of judicial office or duty (1808. *Floyd v. Barker, &c.*) applies to the modern form of the crime.

The ancient writ of conspiracy appears not to have lain against husband and wife alone. It is said to have lain against husband, wife and a third person. (See Yearb. 38 Edw. 3, 3a: 40 Edw. 3, 19: 41 Edw. 3, 29: Fitzh. N. B. 116 l: Staundf. 174.) But the effect of the ancient authorities is doubtful; and it may be questioned whether a husband and wife could not be convicted of conspiracy in any of its modern forms. Proof, however, of coercion by the husband would in such a case have the effect of negativing the fact of conspiracy, since the force would avoid the agreement.

*Reports of the Criminal Law Commissioners of 1834—1848,*

The Criminal Law Commissioners in 1848 (Mr. Starkie, Mr. Kerr, Mr. Amos, 4th Rep. p. 205) reported the following articles as a consolidation of the law of conspiracy:—

“2. The crime of conspiracy consists in an agreement by two persons (not being husband and wife), or more than two persons, to commit any offence, or to defraud or injure the public or any individual person.

“It is immaterial to the crime of conspiracy whether the causing such fraud or injury be the ultimate object of such agreement, or be merely incidental to that object or to the means of effecting it.

“4. Every agreement to defraud or injure the public in respect of any property, or to endanger the public safety or peace, or to annoy or disturb the public in the enjoyment of any civil right, or to subvert or deprave religion or morals, or to prevent, pervert or obstruct the administration of justice or any other branch of executive authority, or to hinder or obstruct the due operation of any law for the regulation of marriage, the maintenance of the poor, or any other law for the regulation of the state or condition of society, or to occasion any other public injury or nuisance, or which directly tends to produce any such injury or nuisance, is an agreement within article 2.

“5. Every agreement with intent to injure or prejudice any other in his person, reputation, office, profession, occupation, state, or condition in society, or to injure or disturb him in the possession or exercise of any civil right, or to defraud or injure him in respect of his property, is within the meaning of article 2.

"6. It is not essential to the crime of conspiracy, as regards any fraud upon or injury to the public, that the agreement should be injurious or hurtful to the public in its aggregate capacity or all her Majesty's subjects; it is sufficient if it be injurious or hurtful to a class or portion only of those subjects.

"7. Whosoever shall commit the crime of conspiracy, shall in case he shall conspire to commit a felony, or to defraud or injure or annoy the public, incur the penalties of the 11th class" (imprisonment up to three years, with or without fine); "and shall, in respect of any other conspiracy, incur the penalties of the 12th class" (imprisonment up to two years, with or without fine).

These articles are reported without citation of authority and without discussion, except some observations on a case or combination to defraud (1816. Pywell). Substantially similar articles were in like manner reported by former commissioners (Mr. Starkie and Mr. Kerr) in 1843 (7th Rep. p. 89), without authorities or discussion, except some observations on the cases of Turner (1811), and Pywell (1816). It is conceived that the articles contain generalizations from exceptional cases, and some propositions for which no statutory or judicial authority appears to exist.

See further 4th Rep. 1848, pp. 81, 91, 112, for articles relating to seditious conspiracy, to combinations prohibited by the acts of Geo. 3, and to conspiracies falsely to charge with crime.

### § 16. *Foreign Laws.*

No general title corresponding to that of conspiracy in English law appears in either of the Penal Codes of France, Belgium, North Germany, Bavaria, Austria, Holland, Italy or British India. They contain various general provisions concerning abettors, accomplices and participants in crimes, and special provisions for punishing agreements of a treasonable character, riotous assemblies, and secret associations. The French Code and the codes derived from it further specially punish combinations by officials for abuse of their official position, and combinations to disturb prices by fraudulent means, or to engross merchandise, and all the above mentioned codes except those of North Germany and India, contain some special provisions against coalitions by employers and workmen. The former provisions of the French Code with respect to these coalitions were very comprehensive, but they were modified in 1864 by a law which "consecrating [says Sirey] the system of absolute liberty of coalition whether between employers or between workmen, and confining itself to the repression of violence and fraud" repealed the then existing provisions of the code, and substituted the following provisions—(Codes. Roger et Sorel. 1878):—

"414. Sera puni d'un emprisonnement de six jours à trois ans et d'une amende de 16 francs à 3,000 francs, ou de l'une de ces deux peines seulement, quiconque, à l'aide de violences, voies de fait, menaces ou manœuvres frauduleuses, aura amené ou maintenu, tenté d'amener ou de maintenir, une cessation concertée de travail, dans le but de forcer la hausse, ou la baisse des salaires, ou de porter atteinte au libre exercice de l'industrie ou du travail.

"415. Lorsque les faits punis par l'article précédent auront été commis par

suite d'un plan concerté, les coupables pourront être mis, par l'arrêt ou le jugement, sous la surveillance de la haute police pendant deux ans au moins et cinq ans au plus.

"416. Seront punis d'une emprisonnement de six jours à trois mois et d'une amende de 16 francs à 300 francs, ou de l'une de ces deux peines seulement, tous ouvriers, patrons et entrepreneurs d'ouvrage qui, à l'aide d'amendes, défenses, proscriptions, interdictions prononcés par suite d'un plan concerté, auront porté atteinte au libre exercice de l'industrie ou du travail."

The Italian Penal Code (385—388), includes concert by employers to compel their workmen to accept payment in kind, and makes the absence of "reasonable cause" or "just motive" the test of the criminality of combinations to strike or to prevent work or to raise wages. Feuerbach's original Bavarian Code punished such combinations when the workmen of more than one master engaged in them, but by the later forms of that code, combinations, whether of employers or of workmen, appear to be punishable only when their purpose is to resist or obstruct the enforcement of public regulations relating to works. (Art. 141.) All the continental codes and the Indian Code (508), contain comprehensive provisions of general application against intimidation and insult. (See, for a discussion by Belgian jurists of the principles on which legislation against combinations by workmen ought to be based, the Report of the Commission for the revision of the Belgian Penal Code, Book II. Titas. 5, 6; Brussels, 1861, pp. 32—42.)

Livingston's draft Penal Code (1828, p. 140), proposed to punish as conspiracies—(i) conspiracy to commit an offence; (ii) conspiracy "falsely to accuse and prosecute another of committing an offence;" (iii) agreements not to buy labour or goods at more, or not to sell labour or goods at less, than an agreed price, or to enhance the price of victuals, or maliciously "to injure any individual or description of persons in their reputation or profession or trade or property, by agreeing not to employ them, or by other means that would not otherwise amount to an offence." An exception from the third head is proposed in the case of partners, unless the partnership is "specially entered into for the purpose of making such conspiracy."

The draft Penal Code for the State of New York (1865), proposes the following provisions:—

*Criminal Conspiracies defined.*

- § 224. If two or more persons conspire, either:
  - 1. To commit any crime; or,
  - 2. Falsely and maliciously to indict another for any crime; or to procure another to be charged or arrested for any crime; or,
  - 3. Falsely to move or maintain any suit, action or proceeding; or
  - 4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat, or to obtaining money or property, by false pretences; or,
  - 5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or the due administration of the laws,  
they are guilty of a misdemeanor.

*Conspiracy against the Peace of the State.*

§ 225. If two or more persons being out of this state, conspire to commit any act against the peace of this state, the commission or attempted commission of which, within this state, would be treason against the state, they are punishable by imprisonment in a state prison not exceeding ten years.

*Overt Act when necessary.*

§ 226. No agreement except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act beside such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

§ 673-4. (Conspiracy to commit frauds in the sale of passage tickets.)

These clauses, except § 225, are founded on the Revised Statutes of the State of New York.

By the common law, as it is interpreted in Canada, according to a recent Canadian work (Clarke's C. L. 1872, p. 401), "A conspiracy is an agreement by two persons, or more, to do, or cause to be done, an act prohibited by penal law, or to prevent the doing of an act ordained under legal sanction by any means whatever; or to do, or cause to be done, an act, whether lawful or not, by means prohibited by penal law." (Cites *R. v. Roy*, 11 L. C. J. 93, per Drummond, J.)

In the Scotch common law conspiracy appears to be a general criminal title, but in practice to hold a less prominent place than it holds in English law. Prosecutions seem to have been instituted in Scotland against workmen for combination between 1790 and 1800, but in 1808 a majority of the judges held that a combination to raise wages was not punishable at common law. The history of the cases which followed, and which seem to have established firstly that combinations to coerce employers or workmen were punishable when accompanied with violence, and ultimately that they were punishable even in the absence of violence, will be found in the fifth Report of the Select Committee (H. C.) of 1824, on Artizans and Machinery, p. 489. These decisions were based not on any supposed ancient precedents or rules of law, but on the principle that the common law of Scotland is expansive.

"This new point of dittay [Baron Hume says in a passage quoted *ubi sup.*] seems therefore now to be thoroughly established, and it furnishes another illustration of the character of our common law, and of its power to chastise, of its own native vigour, all wrongs and disorders as the state of society brings them forth, which are found to be materially dangerous to the public welfare."

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### § 17. Conclusions.

The question remains, what is the proper place or use in the criminal law of the mere mental act or state of agreement or con-

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currence;—an act or state which in itself is plainly neutral and conveys no associated idea of praise or blame. In the attempt to answer this question the first step is to distinguish between—(i) agreements for the commission of crimes, (ii) agreements for minor offences, and (iii) agreements for acts which in the absence of agreement would not be crimes or offences.

(i.) *Agreements for the commission of Crimes.*—A law which directs the prosecution or punishment in a particular manner of an agreement for a crime is merely auxiliary to the law which creates the crime. The aid which it brings may be of either or all of four kinds. Firstly, the agreement may serve as a substitute for an actual attempt or commission, the mere act of agreement for execution of a criminal design being treated not merely as a sufficient evidence of the design but also as an “overt” act or act in furtherance of the design. For this purpose the use of such a law is not altogether so great as at first sight it may appear to be, for it is seldom that direct proof occurs of an actual agreement by words or signs, and the agreement is commonly inferred from apparent concurrence in acts which might of themselves be made to serve the same purpose. Still in many cases the fact of the concurrence of several persons in acts apparently tending to a particular result assists the conclusion that the accomplishment of the result was intended by them, and lessens the probability of chance or of ignorance or mistake in any of the persons. Moreover, it is hardly possible to frame a completely satisfactory definition of an attempt, and the concurrence of one person with others in acts done in apparent furtherance of a criminal design may not improperly take the place of an approximation to completion of the design as an evidence that the person had fully adopted the design and committed himself to its complete execution. Secondly, the attachment of criminality to the agreement may be useful in founding jurisdiction. Thus in Wakefield’s Case (1827) the design was to carry away an heiress under age from England and to marry her in Scotland to one of the defendants. By the construction put by the judges on the statute on which the crime of abduction then depended, it was of the essence of the crime that the purposes of the abduction should have been consummated, and as that event was not to happen in England, the commencement of the abduction in England did not amount to an attempt to commit a crime in England. But here the law of conspiracy came in aid of the law of attempts, and gave jurisdiction to the English courts by attaching criminality to the agreement as evidenced by acts done in England in furtherance of the design, although those acts did not amount to an attempt to commit a crime in England. Thirdly, there may be cases in which the agreement or concurrence of several persons in the execution of a criminal design is a proper ground for aggravation of their punishment beyond what would be proper in the case

of a sole defendant. Such would be cases in which the co-operation of several persons at different places is likely to facilitate the execution or the concealment of a crime, or in which the presence of several persons together is intended to increase the means of force or to create terror, or cases of fraud in which suspicion and ordinary caution are likely to be disarmed by the increased credibility of a representation made by several persons. Some instances of the application of this principle are to be found in the English law, as in the Night Poaching Act. In some foreign codes it is applied less sparingly; and it might probably receive with advantage a still more general application. Lastly, a law which attaches criminality to the mere agreement for a crime may be useful as a ground for admission of evidence which might not be relevant to an issue confined to the actual attempt or commission. The English law of conspiracy to commit crimes attains the first two and the last of these objects; but it is defective in that it has no sufficient means of proportioning the punishment to the gravity of the criminal design. Conspiracies to murder are now punishable with penal servitude for ten years (but still only as misdemeanors). Conspiracies for cheats, extortion, false accusation, or perversion of justice, may be punished with hard labour during such term of imprisonment, as may be awarded at common law. But, with these exceptions, conspiracies of the most aggravated kinds seem to be punishable only by simple imprisonment, fine and requirement of surety, as in the case of any misdemeanor at common law. This defect might perhaps be simply cured by extending the law of abetment in cases of combination to abetments which are not followed by an actual attempt or complete crime. Such a provision would of itself supply the basis of a graduated scale of punishment, by attracting the punishments already provided for the completed crimes. A limitation of the maximum of punishment, in cases where the crime is not completed, to a proportion or part of the punishment provided for the completed crime, and a provision for increased punishment in certain cases (as above suggested) when the crime is completed, or when an actual attempt is committed by persons acting in combination, would complete a system the principles of which have already been adopted in the Indian and in several Continental penal codes.

(ii.) *Agreements for minor Offences.*—So far the question has been of agreements for crimes. It is next to be considered in what manner agreements ought to be treated when they are for offences punishable only on summary prosecution and by minor penalties. There is great difficulty in discovering the principles which are here applicable; but the difficulty will be diminished by dismissing at the outset all offences which ought in a good penal system to be treated as crimes, but which happen to be treated only as minor offences in any particular penal system. These being eliminated,

the remaining offences consist in the production of results which, *ex hypothesi*, are not in themselves of grave enough consequence to be matters for indictment; and, if so, it must in general be immaterial whether the results are produced by one person or by two or more persons. To permit two persons to be indicted for a conspiracy to make a slide in the street of a town, or to catch hedge-sparrows in April, would be to destroy that distinction between crimes and minor offences which in every country it is held important to preserve. On the other hand, there may be cases in which the concurrence of several persons for committing an offence may essentially change its character, and so enhance its mischief that the joint act may properly be treated as a crime. It would seem to be inexpedient to leave it to the choice of the prosecutor, after the act has been done, to determine to which of the two classes the act is to be referred in a particular case, for this would in effect apply a penalty greater than could have been anticipated by the offenders in that case, and yet would not convey that certain intimation of penal consequences to future offenders, without which a punishment fails to deter. What then is the test? It is conceived that no general test can be found; but that whoever undertakes the task of criminal legislation ought to consider the different kinds of minor offences separately, and to specify in the written law the kinds in which the guilt is liable to be treated as enhanced by combination. Exhaustive lists of minor offences are furnished not only by foreign codes, but by the English statutes, and it would not be difficult to reduce to a small number the cases in which there may be ground for such treatment. This task cannot here be attempted, but instances may be suggested. Firstly, the offence of rattening, as it is defined by the 34 & 35 Vict. c. 32 ("if he hide any tools, clothes, or other property owned or used by such person, or deprive him of or hinder him in the use thereof," with a view to coerce him to quit or refuse work, or to belong or not to belong to a union, &c.), seems to be such an instance. Threats of the kinds and used with the intents mentioned in the same statute, seem to be another instance. These are offences which, irrespectively of the agreement, are on the verge of criminal force, and they derive greatly increased effectiveness from the concurrence of several persons. A case of great difficulty is that the combined breach of contract, of a kind for the breach of which an individual may be punished. Much may be said both for and against attaching a criminal sanction to contracts in certain cases (a.) But even where it is thought neces-

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(a) For instance, if a criminal penalty is attached to the breach of a time-contract, workmen may be likely to abstain from entering into contracts which may subject them to criminal jurisdiction; and, in so far as they are induced so to abstain, the law would operate to discourage the undertaking of continuous service, and to prevent the establishment of permanent and organized relations and community of interests between the employer and the employed.

sary to visit breaches of contract with summary penalties, it does not follow that it must be expedient to proceed by indictment for the concerted breach. The concert may commonly be a mere simultaneity arising from the fact that one real or supposed grievance happens to press at the same time on many persons; and in such a case an interchange of complaints is inevitable, and does not of itself involve anything which it can be desirable to punish. Still, so long as the law continues in any case to consider a breach of contract as a fit subject for punishment, it cannot be said that there may not be instances in which a concert to break, or even to counsel the concerted breach of such contracts may be properly visited with a punishment greater than that which is inflicted on a sole offender; for not only may the mischief be greater, but in proportion to the superior efficacy of a concerted breach of contract is the temptation to use it for attaining the objects, whatever they may be, for which contracts are broken. But on the whole it is conceived that there can be very few kinds of minor offences, the quality of which can be so altered by agreement as to make it necessary to punish them by indictment; and that those kinds ought to be considered beforehand by the legislature and specified in the written law.

(iii.) *Agreements for Acts which in the absence of Agreement would not be Crimes or Offences.*—It remains to be considered in what cases acts which are not punishable in one person may properly be treated as crimes when they are done by several persons acting in agreement. Two classes of cases, which rest on peculiar grounds, must first be distinguished. One of these peculiar classes comprises acts which are necessarily collective and which cannot for physical reasons be committed by one person. Such are the crimes of unlawful assembly or association, and of a fraudulent knock-out at an auction, and the crime, which is punished by the French Code, of concert by officials for improper purposes which cannot be accomplished without the co operation of different departments. The other peculiar class comprises acts, such as certain frauds or perversions of justice, which ought to be punishable independently of agreement. If a particular penal system is so imperfect as not to punish some acts of this kind, irrespectively of agreement, it may be well that its deficiencies should be partially supplemented by a power to punish the concerted acts; but the ground on which their punishment is to be justified is not the agreement, but its purposes.

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On the other hand, there may be some exceptional trades, the sudden interruption of which might be of so mischievous consequence to the public, that workmen who chose to engage in them might properly be required to engage for a fixed term, and be punished for leaving work before the end of the term.

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Apart from cases falling within one or other of these two classes, there appear to be great theoretical objections to any general rule that agreement may make punishable that which ought not to be punished in the absence of agreement; for if the *act* is one which can be done by a person acting alone, and when so done ought not to be punished, it is difficult to see at what point and on what ground criminality can be generally introduced by the fact that two or more persons concur in the act. No such rule seems to have been admitted by the framers of the Indian Code in any case or by the framers of the continental codes which have been examined, except in some cases of agreements by traders, employers or workmen. Nor does it seem possible to frame such a rule, at all general in its scope, which would not include large classes of acts that could not properly be made criminal. With respect to agreements, other than agreements for damage to the interest of individuals, no general test has been suggested. With respect to agreements for damage to the interests of individuals, the only tests which have been suggested are those of civil injury and of "malice." But it could not be seriously proposed to make agreement in doing a civil injury generally criminal; and it has long been recognized that the only general meaning which can be attached to "malice," for legal purposes, is that of intention to produce a result, and to do so without or not in pursuance of an excuse or just cause: and the legal value of malice depends on the nature of the result which is intended to be produced, and not on the malice itself, which is merely a condition of guilt in certain cases. If two persons agree to walk in a park without leave, or to break a contract which they could perform, their mental state displays every element of malice in the only distinct legal sense in which that term can be used.

On the other hand, it cannot be doubted but that there may be exceptional cases in which acts, unnecessary to be punished when done by persons acting individually, may become proper objects of penal law when they are done by several or many persons. Such, in the laws of several countries, are certain kinds of combined conduct by traders, employers, or workmen in respect of the prices of goods or labour. Into the policy of penal legislation on these questions it is not proposed to enter. But it is to be observed that, even in these cases, the tendency of modern legislative change has been to abandon the general forms of enactment and to substitute provisions containing definite criteria of criminality, such as the use of violence or of threats of violence. Nor can it be doubted but that this course ought to be followed in all cases, at least so far as to make clear before hand, both to the legislature and to those whom the law will affect, what it is that is forbidden (b).

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(b) For instance, there may be much to be said for punishing workmen who should agree to tell an employer in a dictatorial manner that he must discharge an obnoxious person or that they will strike on the termination of their exist-

On the whole it seems that the uses in criminal law of the doctrine of the criminality of agreement are of the following kinds and subject to the following limitations, viz :—

1. Its principal function is that of a general auxiliary to laws creating particular crimes. Four modes have been specified in which it may be so auxiliary.

2. In some cases it may be proper to treat the agreement for a minor offence as so altering its quality and mischief as to make it a fit object for punishment as a crime. But these cases are probably few, and they ought to be specified in the written law.

3. There are some mischievous conditions of things, such as an unlawful assembly, which ought to be punished as crimes, and which cannot be brought about except by the concurrence of more persons than one.

4. There may be cases in which acts done by several persons in agreement ought to be punished, although the same acts ought not to be punished if done without agreement. But these ought to be specified and carefully defined (c.)

5. In an imperfect system of criminal law the doctrine of criminal agreements for acts not criminal may be of great practical value for the punishment of persons for acts which ought to be made punishable irrespectively of agreement, and especially for some kinds of fraud; but this use of the doctrine involves an important delegation of a legislative power in a matter in which the exercise of such power ought to be carefully guarded, since the legislature admits its own inability to discover the principles on which legislation ought to proceed.

ing engagements. But it appears to be now lawful for workmen to agree among themselves not to return to work where an obnoxious person continues to be employed; and a law which should prohibit them from informing the employer of their resolution would leave them no course but that of striking without reason given, as a means of suggesting to the employer that there is a grievance about which he will do well to inquire. Such a law would be more likely to embitter differences than to benefit the public or either of the parties. Then if the dictation in fact by simultaneous cessation of labour is lawful, and if the dictation in words by a civil intimation of the object is lawful, can they be properly made criminal by reason of a bad or offensive manner, which possibly formed no part of the design ?

(c) Perhaps the most difficult case will be found to be that of sedition. It seems to be a question rather of policy than of jurisprudence what conduct should be punishable on this ground, and some vagueness may here be a necessary condition of efficiency. Still propositions so general as some which occur or are involved in O'Connell's Case (1844, *inf.* App. II.) could hardly be embodied in a written law.

# APPENDICES.

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- I. LIST OF STATUTES.
  - II. LEADING CASES.
  - III. LISTS OF CASES.
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## APPENDIX I.

### L I S T O F S T A T U T E S

*Now in force relating to Conspiracies and Criminal Combinations  
(except for Treason, Treason-Felony or Riot).*

A.D.			
1292	—	20 Edw. 1 . . . . .	Statutum de Conspiratoribus
1300	—	28 Edw. 1, c. 10 . . . . .	Artic. <i>sup.</i> Cart.
1305	—	33 Edw. 1 . . . . .	Ordinatio de Conspiratoribus.
1330	—	4 Edw. 3, c. 11 . . . . .	Commission of Oyer and Terminer to enforce the three former ordinances.
1797	—	37 Geo. 3, c. 123 . . . . .	Unlawful Societies.
1799	—	39 Geo. 3, c. 79 . . . . .	Unlawful Societies.
1817	—	57 Geo. 3, c. 19 . . . . .	Unlawful Societies.
1842	—	5 & 6 Vict. c. 38 . . . . .	Jurisdiction of Quarter Sessions.
1844	—	7 & 8 Vict. c. 24 . . . . .	Forestalling. &c.
1846	—	9 & 10 Vict. c. 33 . . . . .	Proceedings for Penalties under the Acts of 1799 and 1817 must be commenced in the name of a Law Officer.
1851	—	14 & 15 Vict. c. 100 s. 29 . . . . .	Hard Labour may be inflicted for certain conspiracies.
1859	—	22 & 23 Vict. c. 17 . . . . .	Vexatious Indictments Act.
1861	—	24 & 25 Vict. c. 100, s. 4 . . . . .	Conspiracy to Murder.
1867	—	30 & 31 Vict. c. 35 . . . . .	Amends the Vexatious Indictments Act.
1875	—	38 & 39 Vict. c. 86 . . . . .	Relates to strikes among workmen, Amer. Ed.

## APPENDIX II.

## LEADING CASES.

1351. Anon.	1814. De Berenger.
1354. Anon.	1834. Seward.
1611. The Poulterers' Case.	1837. Murphy.
1665. Starling (Brewers of London).	1844. O'Connell.
1811. Turner.	1870. Warburton.

*Anon.* 1351. 24 *Edw.* 3, p. 75 (99).

The son of W. de J. sued in K. B. by leave of the king, to reverse a judgment given against him on circuit at Derby on a presentment of conspiracy ; and he assigned as error that the presentment showed neither day, year, nor place ; and also that the matter alleged, which was imprisonment of a man until he should pay a fine, sounded rather in the nature of oppression of the people than in conspiracy.

It was answered that he had been arraigned and pleaded not guilty, and so had waived the irregularity ; and also, that since his father, who had been indicted with the complainant as his only co-conspirator, was dead, a reversal of the judgment against the complainant would leave a judgment on record against the father, which the reversal in the complainant's case would show to have been erroneous ; and so there would be inconsistent records.

But the court held that the court in eyre ought not to have required the complainant to surrender on such a presentment, from which it could not be gathered whence the visne were to come ; and they said, "It will be a strong thing if the death of his neighbour or his companion shall bar his remedy." "And because neither year, nor day, nor place was averred, and in conspiracy it shall be said that they at such a place, &c.; and moreover because the principal matter of the conspiracy alleged is not conspiracy, but rather damage and oppression of the people. Wherefore we reverse and annul the judgment."

*Anon.* 1354. 27 *Ass.* p. 138 b, pl. 44.

Note that two were indicted of confederacy, each to maintain the other, whether his cause should be true or false, and notwithstanding that nothing was suggested to have been put in ure, the parties were put to answer, because this thing is forbidden by the law (*defendu en la ley*). (See the Act, 33, Edw. 1, &c.)

1611. *The Poulterers' Case*, 9 Rep. 55 Moore, 814.

Mich. 8 Jac. Regis. (In the Star Chamber. See Moore, 814; 1 Bulst. 150.) "The case between Stone, plaintiff, and Ralph Waters, Henry Bate, J. Woodbridge, and many others, Poulterers of London, defendants, for a combination, confederacy, and agreement betwixt them falsely and maliciously to charge the plaintiff (who had married the widow of a poultreer in Gracechurch Street) with the robbery of the said Ralph Waters, supposed to be committed in the

county of Essex, and to procure him to be indicted, arraigned, adjudged and hanged, and in execution of this false conspiracy, they procured divers warrants of justices of peace by force whereof Stone was apprehended, examined and bound to appear at the assizes in Essex; at which assizes the defendants did appear, and preferred a bill of indictment of robbery against the said plaintiff; and the justices of assize hearing the evidence to the grand jury openly in court, they perceived great malice in the defendants in the prosecution of the cause, and upon the whole matter it appeared, that the plaintiff the whole day that Waters was robbed was in London, so that it was impossible that he committed the robbery, and thereupon the grand inquest found—*Ignoramus*. And it was moved and strongly urged by the defendant's counsel, that admitting this combination, confederacy and agreement between them to indict the plaintiff to be false and malicious, that yet no action lies for it in this court or elsewhere, for divers reasons,—1. Because no writ of *conspiracy* for the party grieved, or indictment or other suit for the king lies, but where the party grieved is indicted, and *legitimo modo acquietatus*, as the books are [F. N. B. 114, &c]. 2. Every one who knows himself guilty may, to cover their offences and to terrify or discourage those who would prosecute the cause against them, and surmise a confederacy, combination, or agreement betwixt them, and by such means notorious offenders will escape unpunished, or, at least, justice will be in danger of being perverted, and great offences smothered, and therefore they said, that there was no precedent or warrant in law to maintain such a bill as this is. But upon good consideration it was resolved that the bill was maintainable; and in this case divers points were resolved. \* \* \*

And it is true, that a writ of *conspiracy* lies not unless the party is indicted, and *legitimo modo acquietatus*, for so are the words of the writ; but that a false conspiracy betwixt divers persons shall be punished, although nothing be put in execution, is full and manifest in our books; and therefore in 27 Ass. p. 44, in the Articles of the charge of Enquiry by the Enquest in the King's Bench, there is a *Nota*, that two were indicted of confederacy, each of them to maintain the other, whether their matter be true or false, and notwithstanding that nothing was supposed to be put in execution, the parties were forced to answer to it, because the thing is forbidden by the law, which are the very words of the book; which proves that such false confederacy is forbidden by the law, although it was not put in use or executed. So there in the next articles in the same book, inquiry shall be of conspirators and confederates, who agree amongst themselves, &c. falsely, to indict, or acquit, &c. the manner of agreement and betwixt whom; which proves also, that confederacy to indict or acquit, although nothing is executed, is punishable by law: and there is another article concerning conspiracy betwixt merchants (a), and in these cases the conspiracy or confederacy is punishable although the conspiracy or confederacy be not executed; and it is held in 19 R. 2, Brief 926, a man shall have a writ of conspiracy, although they do nothing but conspire together, and he shall recover damages, and they may be also indicted thereof. Also the usual commission of *oyer* and *terminer* gives power to the commissioners to enquire, &c. *de omnibus coadunationibus, confederationibus, et falsis alliganciis*; and *coadunatio* is a uniting of themselves together, *confederatio* is a combination amongst them, and *falsa alligantia* is a false binding each to the other, by bond or promise, to execute some unlawful act. In these cases before the unlawful act executed the law punishes the coadunation, confederacy or false alliance, to the end to prevent the unlawful act, *quia quando aliquid prohibetur, prohibetur et id per quod pervenitur ad illud: et affectus punitur licet non sequatur effectus*; and in these cases the common law is a law of mercy, for it prevents the malignant from doing mischief, and the innocent from suffering it. \* \* \* And afterwards upon the hearing of the case, and upon pregnant proofs, the defendants were sentenced for the said false conspiracy by fine and imprisonment. *Nota* reader, these confederacies, punishable by law, before they are executed, ought to have

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(a) This was on the statute 27 Edw. 3, st. 2, c. 3, and followed its words.

four incidents:—1. It ought to be declared by some manner of prosecution, as in this case it was, either by making of bonds, or promises one to the other. 2. It ought to be malicious, as for unjust revenge, &c. 3. It ought to be false against an innocent. 4. It ought to be out of court voluntarily." (See the Act of 1305, 33 Edw. 1).

1665. *Starling*, 1 Sid. 174; 1 Keb. 650, 655.

Information against brewers of London for confederating and conspiring to put down the gallon trade by which the poor are supplied, and to cause the poor to mutiny against the farmers of excise; and also for that whereas the excise was settled on the king by statute as part of his revenue the defendants confederated and conspired to depauperate the farmers of the excise. The jury found them guilty on the second count only. It was moved to quash the information on the ground that it is no crime by our law to depauperate another in order to enrich oneself, as by underselling. But after several debates, the K. B. (Hyde, C. J., et al.) gave judgment for the king, for that the information recited that the excise was parcel of the king's revenue, and to impoverish the farmers would be to make them incapable of rendering the king his revenue; and although there could not be conspiracy without some overt act of several, still they all agreed that the conspiracy here is an act punishable. (It seems to have been supposed by counsel in Thorp's Case, 5 Mod. at 224, that the conspiracy was to brew nothing but small beer.) The Court also held that conspiracy and confederacy need not be laid to be *vi et armis*; and they said there were many informations in the Exchequer for conspiracy to lessen the king's revenue without the *vi et armis*.

1811. *Turner*, 13 East, 228.

Conspiracy to trespass on A.'s preserve by night with offensive weapons and to snare hares there. The K. B. (Lord Ellenborough, C. J., Le Blanc, Bayley and Grose, JJ.) arrested the judgment.

Lord Ellenborough, C. J.—"All the cases in conspiracy proceed upon the ground that the object of the combination is to be effected by some falsity; insomuch that in Tailor and Towlin's Case, in Godb. 444, it was held necessary in conspiracy to allege the matter to be *falso et malitiose*. By the old law indeed the offence was considered to consist in imposing by combination a false crime upon a person. But are you prepared to show that two unqualified persons going out together by agreement to sport is a public offence?

"Spragg's Case was a conspiracy to indict another of a capital crime; which no doubt is an offence. And the case of *The King v. Eccles and others* was considered as a conspiracy in restraint of trade, and so far a conspiracy to do an unlawful act affecting the public. But I should be sorry that the cases in conspiracy against individuals, which have gone far enough, should be pushed still farther: I should be sorry to have it doubted whether persons agreeing to go and sport upon another's ground, in other words, to commit a civil trespass, should be thereby in peril of an indictment for an offence which would subject them to infamous punishment." (See in text, Sect. II. § 11.)

1814. *De Berenger*, 3 M. & S. 67.

Indictment for that defendants contriving by false reports to induce the subjects to believe that peace would soon be made with France, and thereby to occasion a rise of the funds and injure the subjects who should buy funds on February 21, conspired to spread a false report of Napoleon's death, &c.

Lord Ellenborough, C. J.—"A public mischief is stated as the object of this conspiracy; the conspiracy is by false rumours to raise the price of the public funds and securities; and the crime lies in the act of conspiracy and combination to effect that purpose, and would have been complete although it had not been pursued to its consequences, or the parties had not been able to carry it into effect. The purpose itself is mischievous, it strikes at the price of a vendible commodity in the market, and if it gives it a fictitious price,

"by means of false rumours, it is a fraud levelled against all the public, for it is against all such as may possibly have anything to do with the funds on that particular day. It seems to me also not to be necessary to specify the persons, who became purchasers of stock, as the persons to be affected by the conspiracy, for the defendants could not, except by a spirit of prophecy, divine who would be the purchasers on a subsequent day."

Le Blanc, J.—"The charge in the indictment is that the defendants conspired by false rumours to raise the price of the funds on a particular day. It may be admitted therefore that the raising or lowering the price of the public funds is not *per se* a crime. A man may have occasion to sell out a large sum, which may have the effect of depressing the price of stocks, or may buy in a large sum, and thereby raise the price on a particular day, and yet will be guilty of no offence. But if a number of persons conspire by false rumours to raise the funds on a particular day, that is an offence; and the offence is, not in raising the funds simply, but in conspiring by false rumours to raise them on that particular day.

"In the same manner it is if a false rumour be spread on a day prior to a market day, in order to raise the price of a commodity in the market, whether it be an article of necessity or not."

Bayley, J.—"To raise the public funds may be an innocent act, but to conspire to raise them by illegal means, and with a criminal view, is an offence; an offence, perhaps not affecting the public in an equal degree, as if it were done with intent to affect the purchases of the commissioners for the redemption of the national debt, which would be affecting the public in its aggregate capacity; but still, if it be completed it will certainly prejudice a large portion of the king's subjects who have occasion to purchase on that day. And it is not necessary to constitute this an offence that it should be prejudicial to the public in its aggregate capacity, or to all the king's subjects, but it is enough if it be prejudicial to a class of the subjects. Here then is a conspiracy to effect an illegal end, and not only so, but to effect it by illegal means, because to raise the funds by false rumours, is by illegal means. And the end is illegal, for it is to create a temporary rise in the funds without any foundation, the necessary consequence of which must be to prejudice all those who become purchasers during the period of that fluctuation. The next objection is, that the indictment does not state the persons by name whom the defendants intended to defraud, and it is suggested that the indictment would have been good if it had stated that the conspiracy was with intent to deprive certain persons by name, and that by means thereof those persons were prejudiced. But the conspiracy is the thing which constitutes the crime, and it is sufficient if the indictment state the conspiracy as it existed at the time when the crime was complete. It might have been detected before any purchases were made or the mischief was effected, yet that would not have altered the offence, because the parties had done everything in their power, and all that was essential to complete the crime, when they had formed the conspiracy, and used illegal means for effecting it. It did not depend on them but on others whether their conspiracy would be mischievous to others, but their criminality must depend on their own act, and not on the consequences that ensued from it."

Dampier, J.—"I own I cannot raise a doubt but that this is a complete crime of conspiracy according to any definition of it. The means used are wrong, they were false rumours; the object is wrong, it was to give a false value to a commodity in the public market, which was injurious to those who had to purchase."

1834. *Seward*, 1 A. & E. 706.

**First count**, that S. was a male pauper, settled in St. Ives; that B. was a female pauper settled in and chargeable to the parish of Chatteris; that the defendants, conspiring to exonerate Chatteris and to charge St. Ives with B.'s maintenance, procured S. to marry B. and promised him money for so doing.

The third count alleged a meeting for the purposes of the conspiracy and a subsequent removal of the woman to St. Ives, after her marriage, by virtue of an order of justices. The fourth count referred to the fact that the woman was with child and to the expenses of her lying-in. The fifth count alleged an unlawful conspiracy to procure the marriage for the purposes above-mentioned, stating the promise and payment of the bribe to the man. Judgment was arrested. Taunton, J., "It is not the combining to do *any* wrongful act that constitutes a conspiracy:—R. v. Turner."

Lord Denman, C. J.—"I am of opinion that this rule must be absolute. An indictment for conspiracy ought to show, either that it was for an unlawful purpose, or to effect a lawful purpose by unlawful means: that it is not done here. To say that meeting together and combining to exonerate one parish from the burthen of a poor person, and throw it on another, amounts to an indictable conspiracy, is extravagant. If such a proposition could be maintained, it would apply to parishioners hiring out a poor boy from their own parish into another. Then, when it is said that such a proceeding is a conspiracy, because it is to be carried into effect by unlawful means, we must see in the means stated something which amounts to an offence. In *Rex v. Fowler*, money was given to procure the marriage; but Buller, J., directed an acquittal, no force or contrivance appearing. As to *Reginus v. Best*, it was properly held there, that the conspiracy was indictable, though nothing had been done in pursuance of it, because the object was falsely to charge a person with being the father of a bastard child. From the nature of the fact, there could be no doubt that the conspiracy in itself was unlawful. In *Rex v. Spragg*, the indictment only charged a conspiracy to indict a person for a crime, not saying 'falsely to indict,' and this was objected to as insufficient; but it being afterwards alleged that the defendants, *according to the conspiracy*, did falsely indict the party, Lord Mansfield said that 'this was a complete formed conspiracy, actually carried into execution.' the averment of the execution, there, reflected back upon the statement of the conspiracy. That case is not like the present."

Littledale, J.—"The mere procuring of that marriage was a legal act in itself, and the indictment does not state that such procuring was effected by any unlawful means or devices, or false pretences. If it had been alleged to have been done with a sinister purpose and by unlawful means, that statement would have been sufficient. The substance of this charge is, that the defendants conspired to burthen the parish of St. Ives with a pauper (for the merely exonerating themselves could be no offence); but, because the natural consequence of the marriage of these parties was to subject the husbands' parish to a burthen, it does not follow that those who procured the marriage were indictable."

Taunton, J.—"I am of the same opinion. Merely persuading an unmarried man and woman in poor circumstances to contract matrimony, is not an offence. If, indeed, it were done by unfair and undue means, it might be unlawful; but that is not stated. There is no averment that the parties were unwilling, or that the marriage was brought about by any fraud, stratagem or concealment, or by duress or threat. No unlawful means are stated, and the thing in itself is not an offence: to call this a conspiracy, is giving a colour to the case which the facts do not admit of. As stated, it is nothing more than the case where the officers of a parish agree, after consultation, to apprentice out children from their own parish into another; no doubt, when that is done, the one parish may be exonerated and the other subjected to a charge; but no offence is committed."

Williams, J.—"I have always understood, that an indictment was sufficient if it alleged what amounted to a conspiracy in law, though no overt act were stated, or none stated perfectly; and in this case, I have had some doubt whether the fourth count was not sufficient; but, on consideration, I can hardly think that, in that count, if the overt acts are rejected, and the conspiracy alone relied upon, enough appears to make out an indictable offence. Among other things, the fact of the woman having been a burthen to Chat-

"teris at the time in question, is not clearly averred: the terms used are not "such that we can, judicially, take her to have been actually chargeable to "that parish when the alleged offence was committed. Furthermore, I doubt "whether the allegation of conspiracy in that count is to be understood in the "sense in which the counsel for the prosecution have put it to us. It is stated, "that the defendants unlawfully conspiring to exonerate the inhabitants of "Chatteris from the expense which might ensue to them from S. M. Brittan, "as a poor person, being an unmarried woman with child, and then having a "legal settlement in Chatteris, and to aggrieve the inhabitants of St. Ives, "and wrongfully to burthen them with the maintenance of the said S. M. B., "and with the charges of her lying-in, unlawfully did combine, conspire, and "meet together for the purpose last aforesaid; and, being so met, did unlaw- "fully cause and procure, &c. Now, whether a conspiracy *for the purpose* of "doing an act is equivalent to a conspiracy *to do* an act, may be doubted. "In *Rex v. Nield and Others*, the defendants were convicted under a sta- "tute (39 & 40 Geo. 3, c. 106), which makes it penal to enter into agreements "for controlling certain workmen; the conviction stated the defendants to "have entered into an agreement (which was not set out) *for the purpose of* "controlling; and this was held insufficient."

Judgment arrested.

1837. *Murphy*, 8 C. & P. 297.

Conspiracy to prevent the levy of a church-rate by libelling the broker employed to levy and by obstructing him by collecting riotous assemblies and by inciting persons to resist him.

Coleridge, J. (in summing up).—"You have been properly told that this "being a charge of conspiracy, if you are of opinion that the acts, though "done, were done without common concert and design between these two "parties, the present charge cannot be supported. On the other hand, I am "bound to tell you, that although the common design is the root of the charge, "it is not necessary to prove that these two parties came together and actually "agreed in terms to have this common design, and to pursue it by common "means, and so to carry it into execution. This is not necessary, because in "many cases of the most clearly established conspiracies there are no means of "proving any such thing, and neither law nor common sense requires that it "should be proved. If you find that these two persons pursued by their acts "the same object, often by the same means, one performing one part of an act, "and the other another part of the same act, so as to complete it, with a view "to the attainment of the object which they were pursuing, you will be at "liberty to draw the conclusion that they have been engaged in a conspiracy "to effect that object. The question you have to ask yourselves is, 'Had they "this common design, and did they purpose it by these common means—the "design being unlawful?' I ought also to tell you that by finding the defen- "dants guilty you will not (as has been said) affect the right of petitioning. "It is not wrongful to assemble in a public meeting to petition parliament "against that which is alleged to be a public grievance, neither is it unlawful "to refuse payment of the church-rate in money, and to leave the collector to "obtain payment by taking the goods of the party, as is constantly done in "the case of the Quakers; but it is unlawful, by means like those charged in "this indictment, to prevent these rates being levied on the goods of the party. "It is not necessary that it should be proved that these defendants met to "concert this scheme, nor is it necessary that they should have originated it. "If a conspiracy be already formed, and a person joins it afterwards, he is "equally guilty. You are to say whether, from the acts that have been proved, "you are satisfied that these defendants were acting in concert in this matter. "If you are satisfied that there was concert between them, I am bound to say "that being convinced of the conspiracy, it is not necessary that you should "find both Mr. Murphy and Mr. Douglas doing each particular act, as, after "the fact of a conspiracy is once established in your minds, whatever is either

"said or done by either of the defendants in pursuance of the common design, is, both in law and in common sense, to be considered as the act of both."

"You must satisfy yourselves that in this case the acts of the defendants arose from previous concert and conspiracy, or you should not convict them."

1844. *O'Connell*, 11 Cl. & F. 155.

The first count for seditiously conspiring to excite disaffection among the subjects and to excite them to hatred and contempt of and seditious opposition to the government and constitution; and to promote ill will between different classes of subjects, and especially between the English and Irish, and to excite disaffection in the army; and to procure unlawful and seditious assemblies for obtaining alterations in the government and laws by show of physical force; and to bring the Irish courts into contempt, &c.; and for certain overt acts for these purposes.

The second count, as the first, but omitting the overt acts.

The third, fourth and fifth counts were variations of the first and second.

The sixth count, that the defendants unlawfully and seditiously intending by means of intimidation and the demonstration of great physical force to procure and effect changes to be made in the government, laws and constitution, unlawfully and seditiously did conspire, &c. to cause and procure, &c. divers subjects of the queen to meet and assemble together in large numbers at various times and at different places for the unlawful and seditious purpose of obtaining by means of intimidation to be thereby caused, and by means of the exhibition and demonstration of great physical force at such assemblies and meetings, changes in the government, laws and constitution.

The seventh count as the sixth, but added—"and especially, by the means aforesaid, to bring about and accomplish a dissolution of the legislative union now subsisting between Great Britain and Ireland,"

The eighth count stated an intent to bring the tribunals of justice into contempt, and to cause the subjects to withdraw their differences from the said tribunals.

The ninth count stated an intent to assume and usurp the prerogative of the crown in the establishment of courts for the administration of the law.

The tenth count stated an intent to bring into disrepute the tribunals for the administration of justice.

The eleventh count, that the defendants, intending by means of intimidation and demonstration of physical force, &c. by causing large numbers of persons to meet and assemble, and by means of seditious and inflammatory speeches to be delivered to the said persons, and by means of publishing divers unlawful and seditious writings, to intimidate the lords spiritual and temporal and commons of the parliament of the united kingdom, and thereby to effect changes in the laws and constitution, unlawfully and seditiously did conspire, &c. to cause large numbers of persons to meet together at divers places and times, and by means of seditious speeches, of publishing to the subjects of the queen unlawful and seditious writings, &c. to intimidate the lords spiritual and temporal and the commons, and thereby to effect and bring about changes and alterations in the laws and constitution.

Upon writ of error in the House of Lords, the question was put to the judges:—"Are all or any, and if any, which, of the counts in the indictment bad in law? so that if such count or counts stood alone in the indictment, no judgment against the defendants could properly be entered upon them?" The judges thought that the sixth and seventh counts were insufficient, but that all the other counts sufficiently disclosed objects for which it was criminal to combine.

Tindal, C. J., delivered the opinion of the judges as follows:—"My Lords, "the answer to the first question will depend upon the consideration, whether

" all the counts of the indictment are framed with that proper and convenient certainty, with respect to the substance of the charge of conspiracy, which the law requires; for, undoubtedly, if any of such counts are framed in so loose, uncertain or inapt a manner, as that the defendants might have availed themselves of the insufficiency of the indictment upon a demurrer, there is nothing to prevent them from having the same advantage of the objection upon a writ of error. The crime of conspiracy is complete if two, or more than two, should agree to do an illegal thing; that is, to effect something in itself unlawful, or to effect, by unlawful means, something which in itself may be indifferent, or even lawful. That it was an offence known to the common law, and not first created by the 33 Edw. 1, is manifest. That statute speaks of conspiracy as a term at that time well known to the law, and professes only to be 'a definition of conspirators.' It has accordingly been always held to be the law, that the gist of the offence of conspiracy is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not. (R. v. Best, R. v. Edwards.) No serious objection appears to have been made at your Lordships' bar against the sufficiency of any of the counts prior to the sixth. Indeed, there can be no question but that the charges contained in the first five counts do amount, in each, to the legal offence of conspiracy, and are sufficiently described therein. There can be doubt but that the agreeing of divers persons together to raise discontent and disaffection amongst the liege subjects of the Queen, to stir up jealousies, hatred and ill-will between different classes of her Majesty's subjects, and especially to promote amongst her Majesty's subjects in Ireland feelings of ill-will and hostility towards her Majesty's subjects in other parts of the United Kingdom, and especially in England—which charges are found in each of the first five counts which first occur in the indictment—do form a distinct and definite charge in each, against the several defendants, of an agreement between them to do an illegal act; and it therefore becomes unnecessary to consider the other additional objects and purposes alleged in some of those respective counts to have been comprised within the scope of the agreement of the several defendants. With respect, however, to the sixth and seventh counts, in the form in which they stand upon this record, we all concur in opinion that they do not state the illegal purpose and design of the agreement entered into between the defendants with such proper and sufficient certainty as to lead to the necessary conclusion that it was an agreement to do an act in violation of the law. Each of these two counts does in substance state the agreements of the defendants to have been 'to cause and procure divers subjects to meet together in large numbers, for the unlawful and seditious purpose of obtaining, by means of the intimidation to be thereby caused, and by means of the exhibition and demonstration of the great physical force at such meetings, changes in the government, laws and constitution of the realm.' Now, though it may be inferred from this statement, that the object of the defendants was probably illegal, yet it does not appear to us to be so alleged with sufficient certainty. The word 'intimidation' is not a technical word: it is not *vocabulum artis*, having a necessary meaning in a bad sense; it is a word in common use, employed on this occasion in its popular sense; and in order to give it any force, it ought at least to appear from the context what species of fear was intended, or upon whom such fear was intended to operate. But these counts contain no intimation whatever upon what persons this intimidation was intended to operate; it is left in complete uncertainty whether the intimidation was directed against the peaceable inhabitants of the surrounding places, against the subjects of the Queen dwelling in Ireland in general, against persons in the exercise of public authority there, or even against the legislature of the realm. Again, the mere allegation that these changes were to be obtained by the exhibition and demonstration of physical force, without any allegation that such force was to be used, or threatened to be used, seems to us to mean no more than the mere display of numbers, and consequently to carry

" the matter no further. Applying the same principle and mode of reasoning to the consideration of the eighth, ninth and tenth counts of the indictment, we all concur in opinion that the object and purpose of the agreement entered into by the defendants, as disclosed upon those counts, is an agreement for the performance of an act, and the attainment of an object, which is a violation of the laws of the land. We think it unnecessary to state reasons in support of the opinion, that an agreement between the defendants to diminish the confidence of her Majesty's subjects in Ireland in the general administration of the law therein, or an agreement to bring into hatred and disrepute the tribunals by law established in Ireland for the administration of justice, are each and every of them agreements to effect purposes in manifest violation of the law. Upon the sufficiency of the eleventh count, no doubt whatever has been raised."

Lord Denman doubted whether the counts relating to contempts of the courts were good:—" I am by no means clear that there is anything illegal involved in exciting disapprobation of the courts of law, for the purpose of having other courts substituted more cheap, efficient, and satisfactory."

Lord Campbell said,—“ A conspiracy to effect an unlawful purpose, or to effect a lawful purpose by unlawful means, is by the law of England an indictable offence: and it is fit that if several persons deliberately plot mischief to an individual or to the state, they should be liable to punishment, although they may have done no act in execution of their scheme. Where they have actually done what they intended to do, it may be more proper to prosecute them for their illegal acts; but in point of law, they remain liable for the offence of entering into the conspiracy. The first five counts clearly charge the defendants with having conspired together to effect unlawful purposes. The fifth count was strongly objected to; but I consider that any person who deliberately attempts to promote feelings of ill-will and hostility between different classes of her Majesty's subjects—to make the English be hated by the Irish, or the Irish be hated by the English—is guilty of a most culpable proceeding; and that, if several combine to do so, they commit a misdemeanor for which they may be indicted and punished. I have entertained some doubt whether the eighth count does more than charge a design to show the inefficiency of certain tribunals, that others more efficient may be substituted for them by the legislature—in which case it would be insufficient; although a conspiracy generally to bring into discredit the administration of justice in the country, with a view to alienate the people from the government, would certainly be a misdemeanor.”

Other points in this case were—

1. That where a count charged an agreement for several purposes, a verdict was bad which found that a defendant had agreed with A. for some of the purposes, and with B. for others; for this was a finding of two agreements, where the count charged only one.
2. That where a count charged an agreement for several purposes, a verdict was bad for repugnancy which found three defendants guilty generally, and others guilty as to some only of the purposes; for the finding as to the three implied that all had agreed with them as to all the purposes.
3. That the general judgment on several counts, some of which were bad, was erroneous. (But in Mulcahy's Case, 1868, it was held in D. P., in a case of treason felony, that a verdict and judgment on a count were good where the count contained some sufficient overt acts, although it also averred others which were insufficient.)

1870. *Warburton, L. R., 1 C. C. 274.*

General count for conspiracy by divers subtle means and devices to cheat and defraud L. Proof that the prisoner was partner with L., and conspired with P., by means of false accounts to pretend that the firm owed money to P., with intent that such money when paid to P. should be divided between P. and the

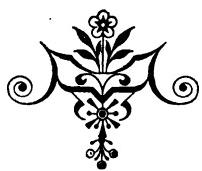
(4760)

prisoner, and that L. should so be defrauded. The conspiracy was before the passing of the Recorder's Act, 31 & 32 Vict. c. 116, for protection of partners. It was objected that the prisoner's act, though immoral, was not illegal, that L. would have had no remedy at law against the prisoner, nor could the prisoner be indicted either for larceny or for false pretences (Evans, 32 L. J., M. C. 38; L. & C. 252); and that an act for which there is merely an equitable remedy is not an illegal act within the meaning of the law of conspiracy. But the C. C. C. R. held the conviction good.

Cockburn, C. J., "even assuming that no action or indictment would lie for such acts, the acts are wrongful nevertheless, and there is a remedy, viz., by proceedings in equity."

Cockburn, C. J.—"It has been doubted sometimes whether the law of England does not go too far in treating as conspiracies agreements to do acts which, if done, would not be criminal offences. This question does not, however, arise here, as no one would wish to restrict the law so that it should not include a case like the present. It is sufficient to constitute a conspiracy if two or more persons combine by fraud and false pretences to injure another. It is not necessary in order to constitute a conspiracy that the acts agreed to be done should be acts which if done would be criminal. It is enough if the acts agreed to be done, although not criminal, are wrongful, *i. e.*, amount to a civil wrong. Here, there was undoubtedly an agreement with reference to the division of the partnership property or of the partnership profits. It is equally clear that the agreement was to commit a civil wrong, because the agreement was to deprive the prisoner's partner by fraud and false pretences of his just share of the property or profits of the partnership. A civil wrong was therefore intended to Lister. The facts of this case thus fall within the rule that when two fraudulently combine, the agreement may be criminal, although if the agreement was carried out no crime would be committed, but a civil wrong only would be inflicted on a third party. In this case the object of the agreement was, perhaps, not criminal. It is not necessary to decide whether or not it was criminal; it was, however, a conspiracy, as the object was to commit a civil wrong by fraud and false pretences, and I think that the conviction should be affirmed."

Channell and Cleasby, BB., Keating and Brett, JJ., concurred.



(4762)

## APPENDIX III.

## LISTS OF ENGLISH CASES.

[NOTE.—This Appendix does not include the ancient cases on the writ of conspiracy, nor the cases on treason, except such cases of either of these kinds as are of some importance for the general law of conspiracies and criminal agreements.]

*A List of the Cases on Conspiracy chronologically arranged.*

1350.	Anon.	1721.	Journeymen Tailors of Cambridge.
1354.	27 Edw. 3, Art. of Inquest.	1725.	Edwards.
1354.	Anon.	1730.	Eryan.
1356.	Anon.	1744.	Robinson.
1369.	The Lumbard's Case.	1745.	Niccols.
1574.	Sydenham v. Keilaway.	1752.	Chetwynd v. Lindon.
1597.	Anon.	1756.	M'Daniel.
1599.	Amerideth.	1758.	Norris.
1600.	Blunt.	1759.	Herbert.
1607.	Lord Gray of Groby.	1760.	Spragg.
1608.	Floyd v. Barker.	1761.	Wheatley.
1611.	The Poulterers' Case.	1762.	Rispal.
1612.	Ashley.	1763.	Parsons.
1613.	Scarlet.	1763.	Delaval.
1616.	Bagg.	1767.	Tarrant.
1629.	Tailor and Towlin.	1769.	Virtue v. Lord Clive
1636.	Midwinter and Scrogg.	1775.	Leigh.
1663.	Timberley and Childe (or Kimberly).	1780.	Young.
1665.	Starling.	1782.	Hevey.
1671.	Opie.	1783.	Eccles.
1674.	Thody.	1783.	Compton.
1678.	Armstrong.	1788.	Fowler.
1680.	Blood.	1789.	Pasley v. Freeman.
1682.	Lord Grey. (See Note, p. 106.)	1792.	Parkhouse.
1685.	Salter.	1793.	Prisoners' Case.
1688.	Grimes.	1794.	Hardy.
1697.	Thorp.	1794.	Horne Tooke
1698.	Anon.	1795.	Tanner.
1699.	Savile v. Roberts.	1796.	Stone.
1704.	Orbell.	1796.	Mawbey.
1704.	Daniell.	1799.	Hammond.
1705.	Callingwood	1802.	Marks.
1705.	Maccarty. (See Note, p. 106.)	1802.	Stevenson.
1705.	Best.	1803.	Brisac.
1719.	Cope.	1804.	Locke.
1719.	Kinnersley and Moore.	1804.	Salter.

## APPENDIX III.

1805. Nield.	1844. Ward.
1807. Claridge <i>v.</i> Hoare.	1845. Jacobs.
1808. Roberts.	1846. Gompertz.
1809. Pollman.	1847. Sydserff.
1809. Stratton.	1847. Selsby.
1809. Teal.	1848. Brittain.
1809. Clifford <i>v.</i> Brandon.	1848. Button.
1811. Turner.	1848. Lacey.
1814. Askew.	1849. Wright.
1814. De Berenger.	1851. Mears.
1814. Wade <i>v.</i> Broughton.	1051. Thompson.
1816. Pywell.	1851. Hewitt.
1816. Brodribb.	1851. Rowlands.
1817. Watson.	1851. Duffield.
1818. Kroehl.	1852. Whitehouse.
1818. Hilbers.	1852. Rycroft.
1818. Gill.	1852. Read.
1819. Ferguson.	1852. Hamp.
1819. Roberts <i>v.</i> Roberts.	1852. Aherne.
1819. Anon.	1853. Yates.
1820. The Queen's Case.	1853. Lumley <i>v.</i> Gye.
1820. King.	1854. Carlisle.
1820. Hunt.	1856. Hilton <i>v.</i> Eckersley
1822. Ridgway.	1856. Bullock.
1823. Murray.	1857. Stapylton.
1824. Whitehead.	1857. Hall.
1824. Thomas.	1858. Timothy.
1825. Hollingberry.	1858. Esdaile.
1826. Serjeant.	1858. Brown.
1826. Cooke.	1858. Bernard.
1826. Bushell <i>v.</i> Barrett.	1859. Absolon.
1827. Mott.	1859. Perham.
1827. Wakefield.	1860. Hudson.
1830. Maudsley.	1861. Walsby <i>v.</i> Anley.
1831. Fowle.	1863. O'Neill <i>v.</i> Longman.
1832. Bykerdike.	1863. O'Neill <i>v.</i> Kruger.
1832. Jones.	1864. Latham.
1833. Ford and Aldridge.	1864. Knowlden.
1833. Bloomfield <i>v.</i> Blake.	1864. Kohn.
1833. Levi <i>v.</i> Levi.	1864. Howell.
1834. Richardson.	1865. Barry.
1834. Biers.	1865. Burch.
1834. Seward.	1866. Shelburne <i>v.</i> Oliver.
1834. Ball.	1866. Wood <i>v.</i> Bowron.
1834. Lovelass.	1867. Skinner.
1834. Dixon.	1867. { Druitt.
1836. Hamilton.	1867. { Bailey.
1837. Murphy.	1867. Hornby <i>v.</i> Close.
1839. Peck.	1868. Desmond.
1839. Frost.	1868. Sheridan.
1839. Vincent.	1868. Springhead Co. <i>v.</i> Riley.
1840. Shellard.	1868. Mulcahy.
1841. Steel.	1869. Shepherd.
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*Note.*—The cases of Lord Grey (1682) and Maccarty (1705) are inserted in these lists of cases because they are cited by East and other writers as cases of conspiracy. But Maccarty's Case is in truth only an example of an indictment for a cheat before the rule was established that private cheats were not indictable at common law (see *sup. p. 10*). The indictment is set out in 2 Ld. Raym. 1179, and it contains nothing about conspiracy or agreement, but only the word *insinul*, which is never used to describe conspiracy, but only a joint crime. In Lord Grey's Case the word "conspirantes" occurs merely by way of aggravation in one of the inducements, and nothing is said about conspiracy throughout the case except in the recital of the indictment by the counsel who opened it. The direction of the L. C. J. Pemberton plainly shows that the case was regarded merely as a case of abduction and procurement of the then crime of adultery. Precedents of indictments against sole defendants for adultery will be found in Tremayne. It is true that there was not in law any criminal abduction, for the lady was seventeen, and not an heir apparent nor a ward of court; but the true meaning of "guardianship by nature" had not then been established by Hargrave (on Co. Lit. 88 b).

Attorney General. "This case, my lord, is in the nature of a ravishment of ward, for it is for taking a young lady out of the tuition and custody of her father, who is her guardian by nature."

L. C. J. Pemberton. "Look you, gentlemen of the jury, here is an information on the behalf of the king against my Lord Grey and the other defendants; and it doth set forth that my Lord Grey having married one of the daughters of the Earl of Berkeley, and having opportunity of coming to the Earl of Berkeley's house, he did unlawfully solicit the Lady Henrietta, another daughter of the Earl of Berkeley's, a young lady, to unlawful love; and that he did entice her from her father's house; and that he did cause her to be conveyed away from thence against her father's consent; and that he did unlawfully use her company afterwards in a very ill manner; and this, gentlemen, is the substance of the information; in truth, it is laid, that he did live in fornication with her. \* \* Now, then, the question before you is, whether there was any such unlawful solicitation of this lady's love; and whether there was any inveiglement of her to withdraw herself and run away from her father's house without his consent; and whether my Lord Grey did at any time frequent her company afterwards."



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The Law  
of  
CRIMINAL CONSPIRACIES  
AND  
AGREEMENTS,  
AS FOUND IN THE AMERICAN CASES;

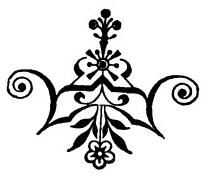
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By HAMPTON L. CARSON,  
OF THE PHILADELPHIA BAR.

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PHILADELPHIA :  
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1887.

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## PREFACE.

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It was the primary intention of the writer to illustrate the text of Mr. Wright's admirable and learned book by references to the American Cases in the form of notes. After collecting the cases, and carefully examining the subject, this plan was abandoned. It was found that the text of Mr. Wright was too slight to admit of any discussion of the American law that could pretend to be thorough without overloading the notes. Besides this, many important subjects—such as the Requisites of Indictments, Evidence, and the general range of the Law of Conspiracy—were but barely mentioned. It was thought proper to compose a distinct work, which, when printed with Mr. Wright's, would give a comprehensive view of both the English and American law.

This change in plan will account for the delay in the appearance of the book.

The writer has purposely departed from Mr. Wright's method of treatment. Examination has satisfied him, that while admirably suited to the purposes of the student and the philosophic jurist, it is too concise to meet the wants of the practitioner. He has sought, therefore, by a full citation of authority and freedom of quotation to make this little treatise upon the American Law of Conspiracy a hand book for the lawyer in active practice.

A Table of Cases with references to the pages of the text of Mr. Wright and a General Index to his matter, both of which were wanting, have been added.

Special acknowledgment is due to Prof. Johnson T. Platt, of New Haven; A. J. Selfridge, Esq., of Boston; Hon. Emerson H. Eggleston, of Cincinnati; W. W. Ker, Esq., and Hon. Furman Sheppard, of Philadelphia and Hon. James V. Campbell of Detroit; to all of whom I am indebted for many courtesies and substantial aid.

HAMPTON L. CARSON.

PHILADELPHIA, October, 1887.

## GENERAL VIEW.

---

The law relating to the crime of Conspiracy presents one of the most remarkable examples of rapid and expansive growth to be found within the range of Criminal Jurisprudence.<sup>1</sup> Beginning, more than six hundred years ago, with a few scattered instances of malicious accusations, embracery, or maintenance, aided by the statute of 33 Edw. I, but dependent chiefly for its development upon the principles of the Common law, it now embraces a wide field. Some of its phases present themselves in agreements to commit acts indictable *per se*, or indictable by statute; while others relate to acts which, when done by an individual, are harmless, but, when supported by the combined strength of a multitude and carried on by secret agencies, become oppressive to public interests, and dangerous to the public welfare. In Lord Coke's day the law was limited to "consultation and agreement, between two or more, to appeal or indict a person falsely and maliciously." Since then it has spread itself over the whole surface of mischievous combination. Thus, we may look for instances in confederacies to commit felonies, such as murder, robbery, or arson; or to commit a misdemeanor, such as an assault and battery, or to tar and feather, to abduct a child, to prevent by violence the use of the English language in the service of a church, to cheat and defraud a bank, to confine a person in an insane asylum, to charge falsely with crime for the purpose of extortion, to plunder a wreck, to obstruct public justice, to raise artificially the price of oil, coal, or stocks; or in combinations among workmen to raise the rate of wages, or to prevent the binding out of an apprentice; or among employers

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<sup>1</sup> Compare Lord Coke's brief description of the offence, 3 Inst. 143, Hawkins b. 1, c. 72, s. 2; Blackstone's Com. 4 Vol. \* 136, Jacob's Law Dict. Tit. Conspiracy, or even Mr. Chitty's discussion, contained in eight pages, Chitty's Crim. Law. Vol. III, \* 1139, with the elaborate and exhaustive examinations into the character and scope of the crime contained in State *v.* Buchanan, 5 Harris & Johnson (Md.), 317, Lambert *v.* the People, 9th Cowen (N. Y.), 578, and Comm. *v.* Carlisle, Brightly's Rep. (Pa.) 36. See, also, Mifflin *v.* Comm., 5 W. & S. (Pa.), 461, and State *v.* Younger, 1 Dev. (N. C.), 357.

to blacklist a former employé; or in confederacies to destroy the property of a railroad corporation, or to defraud the postal service of the United States, or to defeat the right of suffrage. In all these, we discover the same principles invoked to prevent the commission, or to punish the perpetration, of crimes varying in gravity, from daring and dangerous felonies or petty misdemeanors to acts in themselves innocent, but converted by the feature of concert into menaces against the State. Life, liberty, property, the safety of home, the sanctity of the person, the interests of trade and commerce, and the stability of government have been alike the objects of assault by conspirators, whose plots have been aimed at all the relations of life. Few chapters in the history of crime are more dramatic, or present greater variety in the means of attempted accomplishment. The false figures of the accountant, the skill of the forger, the skiff stolen at midnight, or the black mask of the assassin appear as the ready instruments resorted to to effect the purposes of conspirators. In short, Conspiracy may attach itself to every offence to which it leads.

In some respects the crime is peculiar. Although compounded of the two elements of *combination* and *attempt*, it is made to consist in the intent, in an act of the mind, and the formation of this intent, by the interchange of thoughts, is made itself an overt act, done in pursuance of that interchange or agreement.<sup>1</sup> It is not necessary that the conspiracy be executed. The fact of confederating is the gist of the offence, though nothing be done in pursuance of it. "The offence of conspiracy," says Mr. Sergeant Talfourd, "is more difficult to be ascertained precisely, than any other for which an indictment lies; and is indeed rather to be considered as governed by positive decisions than by any consistent and intelligible principles of law. It consists, according to all the authorities, not in the accomplishment of any unlawful or injurious purpose, nor in any one act moving towards that purpose; but in the actual concert and agreement of two or more persons to effect something, which being so concerted and agreed, the law regards as the object of an indictable conspiracy."<sup>2</sup>

Efforts have been made from time to time to relieve the law from this feature of harshness, partly by statute, partly by judicial decisions, partly by great strictness in respect to pleading where the conspiracy was to commit some offence which was not in itself indictable; but the rigor of the rule remains, that the policy of the law forbids the accomplishment of an object by means of a confederacy, when-

<sup>1</sup> See Report made by the Revisers of the Statutes of New York—quoted by the Reporter in a note to *Lambert v. The People*, 9 Cowen. (N. Y.), 625. Also, 2 Edit. Revised Stats. of N. Y. Vol. III, p. 828. Albany—1861.

<sup>2</sup> Talfourd's Dick. Q. S., 335, quoted by Wharton. Amer. Crim. Law. Tit. Conspiracy, § 2291, note. Also Wharton. Precedents of Indictments and Pleas, Book V, Chap. II, note. See Wright, ante, p. 35.

ever the act to be done has a necessary tendency to prejudice the public, or to oppress individuals by unjustly subjecting them to the power of the confederates, and giving effect to the purposes of the latter, whether of extortion or mischief.<sup>1</sup> In some of the States the crime has been made the subject of statutory definition and restriction, in others it rests solely upon the Common Law as found in the English reports, while by the Revised Statutes of the United States, and in one or two of the States, there must be both the corrupt agreement or combination, *and* an overt act done in pursuance thereof, to make the offence a punishable one.

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<sup>1</sup> Comm. v. Carlisle. Brightly's Rep. (Penn.), 36. Per. Gibson, J.

Mr. Wharton, in the recent editions of his great work upon American Criminal law, argues against the further extension of the law of conspiracy. He says :

" But to extend indictable conspiracies so as to include cases where acts, in themselves not indictable, are attempted by concert, involving neither false statement nor concerted force, should be resolutely opposed. A distressing uncertainty will oppress the law, if the mere fact of concert in doing an indifferent act be held to make such act criminal. We all know what offences are indictable, and if we do not, the knowledge is readily obtained. Such offences, when not defined by statute, are limited by definitions, which long processes of judicial interpretation have hardened into shapes which are distinct, solid, notorious, and permanent. It is otherwise, however, when we come to speak of acts, which though not penal when they are committed by persons acting singly, are supposed to be so when brought about by concert which involves neither fraud nor force. These there has never been any judicial attempt to define or legislative attempt to codify. No man can know in advance whether any enterprise in which he may engage cannot, in this way, become subject to prosecution. It is essential to the constitution of an indictable offence, as is elsewhere shown, that it should be proscribed either by statute or by Common law; but conspiracies to commit by non-indictable means non-indictable offences, if we resolve them into their elements, are neither proscribed by Common law nor by statute. By force of their definition their object is not *per se* proscribed, and the other ingredient in their constitution, that of an association of individuals to effect a common end, is essential to all actions in which two persons engage. When we remember also that, as we have seen, it is necessary to a righteous administration of public justice that punishment should be attached only to acts which are made penal by rules which are pre-announced and constant, the objection just stated acquires additional weight. An act of business enterprise in purchasing goods in a cheap market for the purpose of selling them in a dear market, which in one phase of judicial sentiment would be regarded as a meritorious impetus to commercial activity, would be, in another phase of judicial sentiment, as it once has been treated, an indictable offence. Legislative and judicial compromises which one Court may view as essential to the working of the political machine, another Court may hold to be indictable as a corrupt conspiracy. Nor can we continue to accept the risks by which this undefined extension of conspiracy has been justified. It used to be said that the combination of a plurality of persons to do an act invests it with a criminality which it does not otherwise possess. Undoubtedly this is so with riot, which depends on tumult, which again depends on plurality of agents, but riot is positively defined by law, and all who engage in a riot have the means to know what it is, and that it is punishable.

But can this be predicted of combinations which the law does not in advance pronounce to be unlawful? One of the two alternatives we must here accept; either we must, with the old English judges, look upon all voluntary combinations as suspicious and objects of judicial suppression, or we must declare that only such combinations are penal cognizable as are made so either by statute or by a settled judicial construction of the Common Law."

"The conclusion is that:—1st. The offence of conspiracy at Common law is limited to confederacies to effect illegal objects as ends or means. 2d. Confederacies to pervert public justice or unjustly to affect the body politic, and 3d. Confederacies which, from the mode of their operation, exhibit the features of various false devices and tokens, or an aggregation of violence likely to overbear individual resistance and to produce public terror. And this is virtually saying that in the first case, the confederacy is unlawful because it is a cheat at Common law, and the second, because it is an attempt to obstruct justice, and the third case, because it is an attempt at riot."

Wharton's American Criminal Law, 9th Edition, Vol. II., Chapter, Conspiracy.

A different view was expressed by C. J. Gibson, in *Comm. v. Mifflin*, 5 W. & S. (Pa.), 461, which was the case of a conspiracy to procure the elopement of a minor daughter from her father; "Even had the precedents not reached the case before us, there would be no reason why the law of conspiracy should stop short of it now, considering the smallness of the point from which it started, and the degree of its subsequent expansion. \* \* \* I am not one of those who fear that the catalogue of crimes will be unduly enlarged by its progress, seeing, as I do, that it is never invoked, except as a correction of disorder which would else be without one, and as a curb to the immoderate power to do mischief which is gained by a combination of means. It is true that there is no recent precedent of an indictment like the present; but had not the 3 Hen. VII, c. 2, and the 39 Eliz, c. 9, provided a more energetic remedy for the offence, Common law precedents of indictments for it would have abounded. But were we without even the semblance of a precedent, we could not hesitate to pronounce the act of which the defendants have been convicted a Common Law offence."

In *Comm. v. Shannon*, 2 Harris (Pa.), 226, where the same judge refused to sustain an indictment for a conspiracy between a man and a woman to commit adultery, he plainly says that he did not intend to intimate that the law of conspiracy should be permitted to run wild.

See, also, *State v. Younger*, 1 Dev. (N. C.), 357.

## CHAPTER I.

THE ORIGIN AND HISTORY OF THE LAW OF CRIMINAL  
CONSPIRACIES.

It has been made a question how far the crime of Conspiracy was known to the Common Law. Mr. Wright distinctly asserts that no such crime was known, but was created by the Ordinance of Conspirators, 33 Edw. I., enacted in 1305, and argues that the law as it now exists has grown out of the application to cases of conspiracy, properly so called, and as defined by the 33 Edw. I., of the early doctrine, that since the gist of crime was in the intent, a criminal intent, manifested by any act done in furtherance of it might be punishable, although the act did not amount in law to an actual attempt.<sup>1</sup>

A contrary view has been maintained in the leading American case of *State v. Buchanan*,<sup>2</sup> where the Court of Appeals of Maryland, after an exhaustive examination of all of the authorities, expressly held that the offence of conspiracy is of Common Law origin, and is not restricted or abridged by 33 Edw. I.<sup>3</sup>

The indictment charged an executed conspiracy to cheat and defraud the Bank of the United States by fraudulent and dishonest devices, and after setting out the overt acts, concluded against the peace, government,

<sup>1</sup> His views are fully given in the text, and in the notes to § 1, Wright on The Law of Criminal Conspiracies and Agreements, *ante*, pp. 12—15. In O'Connell's case, 11 Cl. & Fin. 155, C. J. Tindal, delivering an opinion in the House of Lords, said "that it was an offence known to the Common Law, and not first created by the 33 Edw. I., is manifest." See Wright, Appendix II, *ante*, p. 76.

<sup>2</sup> *State v. Buchanan*, 5 Harris & Johnson (Md.), 317. A. D. 1831.

<sup>3</sup> A similar view is taken in *State v. DeWitt et al.*, 2 Hill (S. C.), 232, A. D. 1831, where Judge Johnson says: "The statute of 33 Edw. I., which is in force in this State, would seem to have been intended to define the offence of conspiracy and limit it to such as confederate together falsely and maliciously to indict, or move and maintain pleas against others, or who undertake to have or maintain quarrels, pleas, or debates, that concern other parties. But the authorities all agree that this statute is declaratory of the Common law, and that other acts not herein enumerated, constitute conspiracy and are indictable at the Common law." So, also, Bishop on Crim. Law, Vol. II., 7th edit., § 176.

and dignity of the State of Maryland.<sup>1</sup> A demurrer was sustained by the court below, upon the ground that the offence charged did not amount to a crime, either by Common Law or by statute. This judgment was reversed by the Court of Appeals, the opinion being delivered by Judge Buchanan, who said: "It is contended that the offence of conspiracy was originally created by 33 Edw. I, or, if it was a Common Law offence, that the statute either contained a definition of all the conspiracies that were before indictable at Common Law, or annulled the Common Law, and rendered dispusnitable all conspiracies but such as it defines. But neither branch of the proposition is true." He then quotes the exact language of the statute;<sup>2</sup> and

<sup>1</sup> The case was argued by Wirt, Attorney-General of the United States, Harper, and Mitchell, for the State, and by William Pinkney, Winder, and Raymond, for the defendants in error; all of them men of the most distinguished reputation for learning and ability. The indictment, which is printed in full in the report, was drawn by Luther Martin, the Attorney-General of Maryland, and for accuracy and appropriateness of expression is unsurpassed. See Wharton's Precedents of Indictments and Pleas. 2d edition. (618), 459. See Appendix III.

<sup>2</sup> The Statute is as follows: "Who be conspirators and who be chamepertors; conspirators be they who do confederate, or bind themselves, by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously, to indeite; (2.) or falsely to maintain pleas; (3.) and such as cause children within age to appeal men of felony, whereby they are imprisoned, or sore grieved; (4.) and such as retain men in the country, with liveries or fees, for to maintain their malicious enterprises; and this extendeth as well to the takers as the givers; (5.) and stewards and bailiffs of great lords, which, by their seignory, office or power, undertake to hear or maintain quarrels, pleas or debates, that concern other parties than such as touch the estates of their lords or themselves. (6.) This final ordinance and definition of conspiracy, was made and accorded by the king and his council, in his parliament, the 33d year of his reign." 1 Ruffhead 149. The statute, except section 5, is in force in Pennsylvania. See Report of Judges, 3 Biuney's Rep. Appendix, 595. Roberts Digest of British Statutes in force in Penna., p. \*96. The New York declaratory statute, before revision, was almost a transcript. Act 30, March, 1801, Laws N. Y. v. 1, p. 343. Case of the Journeymen Cordwainers of the city of New York. Select Cases in the Courts of New York, vol. I, p. 120. Printed at New York by Isaac Riley, 1811. It is not in force in Maryland. *State v. Buchanan*, *ut supra*. It is in force in South Carolina. *State v. De Witt*, 2 Hill (S. C.), 282, A. D. 1831. Of this statute Mr. Bishop observes: "Here are no negative words, consequently, on principles elsewhere developed (Stat. Crimes & 151 et seq. 173), this statute does not abrogate anything of the prior Common law, but since it professes merely to add a new provision or to affirm an old one, it leaves whatever was before indictable as conspiracy, indictable still." Bishop on Crim. Law, 7th edit., § 174, Vol. II.

argues that it is sufficient, upon its face, to show that Of Common conspiracies were known to the law before. "Why," Law origin. he asks, "should *they* be declared *conspirators*, who should confederate for any of the purposes mentioned in the statute, if they were not liable to punishment for such combinations? And if they were, it was for the conspiracy that they were so liable to be punished, as without the offence of conspiracy, there could have been no punishable conspirators." He then points out that the statute does not prohibit conspiracies or combinations of any kind, nor does it declare them to be unlawful, nor even impose a penalty or inflict any punishment upon the classes of conspirators which it defines. Therefore, if the combinations for any of the purposes mentioned in the statute were punishable at all, it must have been because the offence of conspiracy, *eo nomine*, and the punishment were both known to the law anterior to the statute, which by declaring those engaged in certain specified combinations to be conspirators, subjected them, by force of the Common Law, to the law of conspiracy as it then existed. Besides this, it had never been pretended that the combinations enumerated in the statute were not indictable. As the statute did not in terms make them so, he concludes that it is clear that conspiracy was already an indictable offence at Common Law. This reasoning is supplemented by proof that the *villainous judgment*, which was pronounced against those convicted of conspiracy, was a judgment known only to the Common Law. So also, Lord Coke says that the 33 Edw. I, is simply declaratory;<sup>1</sup> and the civil remedies, which were given in cases of conspiracy by 20 Edw. I, and 28 Edw. I, both earlier statutes, show the existence of the offence. The field embraced by the Common Law is not covered by the statute, as it does not refer to felonies and misdemeanors, and yet conspiracies to rob, to murder, or to commit a rape, a burglary, or arson, or to cheat by false tokens, have always been held to be indictable offences, although no statute makes them so. This could not well be, if the 33 Edw. I, either furnished a complete catalogue of all the conspiracies indictable at Common Law, or restricted or abridged the latter, by rendering punishable all those which it did not define. The purpose of the statute was to remove doubts as to the nature of the acts enumerated, and is not inconsistent with the theory that in the broad field which lay beyond

Proof of Com-  
mon Law  
origin.

<sup>1</sup> 2 Inst. 561—562.

its terms many acts were classed as conspiracies, which it wholly failed to touch. In no other way could the prosecutions of conspiracy have been sustained, of which the books are full; in some of which the very objection was made and overruled that the matter charged as criminal was not within the 33 Edw. I.

After an exhaustive examination of all of the English authorities, the court reached certain definite conclusions which may be summarized as follows:

Extent of the Law of Conspiracy under English decisions.

- I. The offence of conspiracy is of Common Law origin, and is not restricted or abridged by the statute 33 Edw. I.
- II. That a conspiracy to do an act that is criminal *per se* is an indictable offence at Common Law.
- III. That a conspiracy to do an act, in itself innocent, by means which are indictable, is indictable at Common Law.
- IV. That an indictment will lie at Common Law,
  - (1.) For a conspiracy to do an act not illegal nor punishable if done by an individual, but immoral only.<sup>1</sup>
  - (2.) For a conspiracy to do an act neither illegal nor immoral in an individual, but to effect a purpose which has a tendency to prejudice the public.<sup>2</sup>
  - (3.) For a conspiracy to extort money from another, or to injure his reputation by means not indictable if practiced by an individual, as by verbal defamation, and that too, whether it be to charge him with an indictable offence or not.<sup>3</sup>
  - (4.) For a conspiracy to cheat and defraud a third person, accomplished by means of an act which would not in law amount to an indictable cheat, if effected by an individual.<sup>4</sup>

<sup>1</sup> King *v.* Lord Grey, 2 St. Tr. 519 (9 St. Tr. 127). Case of Sir Francis Blake Delaval, 3 Burrows, 1434, 1 W. Bl. 410.

<sup>2</sup> King *v.* Journeyman Tailors, 8 Mod. 10.

King *v.* Edwards, 2 Stra. 707, 8 Mod. 320.

<sup>3</sup> Timberle *v.* Childe, 1 Sid. 68, 1 Lev. 62, 1 Keb. 203.

Childe *v.* North and Timberle, Ibid., 203.

The King *v.* Armstrong, *et al.*, 1 Ventr. 304.

The Queen *v.* Best *et al.*, 2 Ld. Raymond 1167.

" " " Martham Bryam, 2 Str. 866.

King *v.* Kinnersley & Moore, 1 Stra. 193.

" " Parsons *et al.*, 1 W. Bl. 392.

" " Rispal, 3 Burr. 1320, 1. W. Bl. 368.

<sup>4</sup> Breerton *v.* Townsendl, Noy's Rep. 103.

King *v.* Skirrett, 1 Sid. 312.

Queen *v.* MacKarty & Fordenbourg, 2d Ld. Raymond, 1179.

Queen *v.* Orbell, 6 Mod. 42.

King *v.* Wheatly, 2 Burr. 1127.

King *v.* Lara, 2 Leach, 647.

- (5.) For a malicious conspiracy to impoverish or ruin a person in his trade or profession.<sup>1</sup>
- (6.) For a conspiracy to defraud a third person by means of an act not *per se* unlawful, and though no person be injured thereby.<sup>2</sup>
- (7.) For a bare conspiracy to cheat and defraud a third person, though the means of effecting it should not be determined on at the time.<sup>3</sup>
- (8.) That a conspiracy is a substantive offence, and punishable at Common Law though nothing be done in execution of it.<sup>4</sup>
- (9.) That the conspiracy is the gist of the offence.
- (10.) That in a prosecution for a conspiracy, it is sufficient to state in the indictment the conspiracy and the object of it; and that the means by which it was intended to be accomplished need not be set out, being only matters of evidence to prove the charge, and not the crime itself, and may be perfectly indifferent.

"From all which it results," says Judge Buchanan, "that every conspiracy to do an unlawful act, or to do a lawful act for an illegal, fraudulent, malicious or corrupt purpose, or for a purpose which has a tendency to prejudice the public in general, is at Common Law an indictable offence, though nothing be done in execution of it, and no matter by what means the conspiracy was intended to be effected, which may be perfectly indifferent and make no ingredient of the crime, and therefore need not be stated in the indictment."<sup>5</sup>

Although it was strenuously contended that an improper use or embezzlement of the funds of the bank would be in law only a breach of trust, and therefore a combination to effect the same purpose could not amount to an indictable offence, it was held that to constitute an indictable conspiracy it is not necessary that

<sup>1</sup> King *v.* Cope, 1 Stra. 144; King *v.* Eccles, 1 Leach, 274; King *v.* Leigh, 1 C. & K. 28; Clifford *v.* Brandon, 2 Campb., 358.

<sup>2</sup> King *v.* Robinson & Taylor, 1 Leach. 37; King *v.* Berenger, 3 M. & S. 67; King *v.* Edwards *et al.*, 2 Stra. 707.

<sup>3</sup> King *v.* Gill & Henry, 2 B. & Ald. 204.

<sup>4</sup> Poulterer's case, 9 Rep. 55; King *v.* Edwards, 2 Stra. 707; King *v.* Eccles, 1 Leach, 274; King *v.* Gill, 2 B. & Ald. 204; King *v.* Berenger, 3 M. & S. 67.

<sup>5</sup> These remarks as to the matter of an indictment must be regarded as extra-judicial. No exception was taken to the form of the indictment, which fully set forth the overt acts, and the question was not argued. The sole point before the court was whether a conspiracy to cheat and defraud a bank was indictable at Common Law.

the act conspired to be done should, if effected by an individual, be such as would, *per se*, amount to an indictable offence.<sup>1</sup>

**State v. Buchanan** a leading American authority. This case has always been considered a leading American authority. It was one of the earliest as well as one of the most exhaustive examinations of the subject, and has become one of the corner stones of our law.

**Early American cases.** The cases earlier in point of date are but few. The first of these was *Respublica v. Ross*,<sup>2</sup> where it was urged *arguendo* by counsel upon the authority of the Poulterer's Case,<sup>3</sup> and Leach's Crown Cases,<sup>4</sup> that a conspiracy is an indictable offence, though nothing be done in pursuance of it. It is not clear from the report what ruling the court made. In the following year, an indictment was sustained for a conspiracy to inveigle a young girl into matrimony.<sup>5</sup> In *Comm. v. Franklin*,<sup>6</sup> where there was a conspiracy to lay out townships, under powers usurped from the State, an indictment, founded on an Act of Assembly forbidding conspiracies for the purpose of conveying, possessing, or settling on any lands within certain limits, under pretended titles not derived from the authority of Pennsylvania, or the late proprietors (the Penns), was sustained.

In Massachusetts, in *Comm. v. Ward*,<sup>7</sup> no motion was made in arrest of judgment upon an indictment charging a conspiracy to defraud an individual out of goods and merchandise, while in the case of *Comm. v. Judd*,<sup>8</sup> which was that of a conspiracy to manufacture base and spurious indigo, with a fraudulent intent to sell the same as good and genuine indigo, C. J. Parsons, after fully considering the English authorities, thus tersely summarized the law: "The court are satisfied that the gist of a conspiracy is the unlawful confederacy to do an unlawful act or even a lawful act for unlawful purposes.<sup>9</sup> That the offence is complete, when the confederacy is made, and any act done in pursuance of it is no constituent part of the offence, but merely an

<sup>1</sup> *State v. Buchanan*, 5 Harris and Johnson, (Md.), 317.

<sup>2</sup> 2 Yeates' Rep. (Pa.), 1. S. C., 2 Dallas 239, A. D. 1795.

<sup>3</sup> 9 Coke 59.

<sup>4</sup> Leach's Crown Cases, p. 38.

<sup>5</sup> *Respublica v. Hevice et al.*, 2 Yeates (Pa.), 114, A. D. 1796.

<sup>6</sup> 4 Dallas 255.

<sup>7</sup> 1 Mass. 473, A. D. 1805.

<sup>8</sup> 2 Mass. 329, A. D. 1807.

<sup>9</sup> It is interesting to compare this language of C. J. Parsons, in 1807, with that of Lord Denman's celebrated antithesis in *Reg. v. Jones*, 4 B. & Ad. 345 (1832.)

aggravation of it. This rule of the Common Law is to prevent unlawful combinations. A solitary offender may be easily detected and punished. But combinations against law are always dangerous to the public peace, and to private security. To guard against the union of numbers to effect an unlawful design is not easy, and to detect and punish them is often difficult. The unlawful confederacy is therefore punished to prevent the doing of any act in execution of it. Of this principle the adjudged cases leave no doubt. That a conspiracy to do a lawful act for an unlawful purpose is an offence was determined in the cases."

The next case was that of *Comm. v. Tibbetts*,<sup>1</sup> where there was a conspiracy to accuse one of receiving and concealing stolen goods, and the indictment set forth acts in pursuance thereof. It was held, that in an indictment for a conspiracy to accuse one of a crime, it is not necessary to allege that the defendants procured or intended to procure an indictment or other legal process. The conspiracy being the gist of the offence, and acts done in pursuance of it being only matter of aggravation, any informality or uncertainty in alleging such acts will not vitiate the indictment. "It is enough to conspire to charge him with a crime, and falsely to affirm his guilt".

Several cases arose of conspiracies among workmen;<sup>2</sup> but, though ably argued, they did not receive elaborate consideration by a court of high authority until the case of *Comm. ex rel. Chew v. Carlisle*, decided in<sup>3</sup> 1821, by Gibson J., a judge of great and enduring reputation. The case was one of a combination of employers to depress the wages of journeymen below what they would be if there had been no recurrence to artificial means. An application was made to have the defendants discharged upon *habeas corpus*, but they

<sup>1</sup> 2d Mass. 536., A. D. 1807.

<sup>2</sup> Per Parsons, C. J.

<sup>3</sup> These cases, which will be noticed in their proper place (post p. 144 et seq.), are cases of the Journeyman Cordwainers of the City of New York, A. D., 1809. Select Cases, adjudged in the courts of the State of New York, Vol I, p. 111, New York. Published and printed by Isaac Riley, 1811. Case of the Philadelphia Boot and Shoemakers, Philadelphia, 1806. There are many interesting rulings upon trials in the Sessions, reported in the N. Y. City Hall Recorder.

<sup>4</sup> Brightly's (Pa.) Rep., 36. See also case of the Pittsburgh Cordwainers, A. D. 1815.

Trial of Twenty-four Journeymen Tailors, Philadelphia, 1827. All of these pamphlets are scarce.

were remanded by Judge Gibson, of the Supreme Court of Pennsylvania, who, in an able and vigorous opinion, held that "a combination is criminal when the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting them to the power of the confederates."

Comm. v.  
Carlisle.  
Opinion of  
J. Gibson.

He said:—"There are, indeed, a variety of British precedents of indictments against journeymen for combining to raise their wages, and precedents rank next to decisions as evidence of the law, but it has been thought sound policy in England to put this class of the community under restrictions so severe, by statutes that were never extended to this country, that we ought to pause before we adopt their law of conspiracy, as respects artisans, which may be said to have, in some measure, indirectly received its form from the pressure of positive enactment, and which, therefore, may be entirely unfitted to the condition and habits of the same class here \* \* \* \* \*."

"The unsettled state of the law of conspiracy has arisen, as was justly remarked in the argument, from a gradual extension of the limits of the offence; each case having been decided on its own peculiar circumstances without reference to any pre-established principle. When a combination has for its direct object to do a criminal act, as to procure the conviction of an innocent man, (the only case originally indictable, and which afterwards served as a nucleus for the formation of the entire law on the subject,) the mind at once pronounced it criminal. So, where the act was lawful, but the intention was to accomplish it by unlawful means, as where the conviction of a person, known to the conspirators to be guilty, was to be procured by any abuse of his right to a fair trial in the ordinary course. But when the crime became so far enlarged as to include cases where the act was not only lawful in the abstract, but was also to be accomplished exclusively by the use of lawful means, it is obvious that distinctions as complicated and various as the relations and transactions of civil society became instantly involved; and to determine on the guilt or innocence of each of this class of cases, an examination of the nature and principles of the offence became necessary. This examination has not yet been very accurately made, for there is in the books an unusual want of precision in the terms used to describe the distinctive features of guilt or innocence. It is said the union of persons in one common design is the gist of the offence: but that

Opinion of J.  
Gibson.

Comm. v.  
Carlisle.

holds only in regard to a supposed question of the necessity of actual consummation of the act meditated; for if combination were, in every view, the essence of the crime, it would necessarily impart criminality to the most laudable associations." He continues:—"It Motive to be will, therefore, be perceived that the motive for combining, or, what is the same thing, the nature of the object to be attained as a consequence of the lawful act is, in this class of cases, the discriminative circumstance. Where the act is lawful for an individual, it can be the subject of a conspiracy, when done in concert, only where it, or there is a direct intention that injury shall result from the where the object is to benefit the conspirators to prejudice of the public or the oppression of individuals, and where such prejudice or oppression is the natural and necessary consequence. To give appropriate instances respectively referable to each branch of Instances. this classification of criminal intention:—if a number of persons should combine to establish a ferry, not from motives of public or private utility, but to ruin or injure the owner of a neighboring ferry, the wickedness of the motive would render the association criminal, although it is otherwise where capital is combined, not for the purposes of oppression, but fair competition with others of the same calling. So, with respect to the other branch: if the bakers of a town were to combine to hold up the article of bread, and by means of a scarcity thus produced, extort an exorbitant price for it, although the injury to the public would be only collateral to the object of the association, it would be indictable; and to one or other of these, may the motive in every decided case be traced.

"Thus a combination to marry, under feigned names, was criminal, because the object was to affect the interest of a particular parish under the poor laws, or to injure an individual by setting up a colorable title to his estate. An agreement between the officers of an army to throw up their commissions simultaneously in a time of danger, between a number to hiss a play, right or wrong, was indictable, because there was an unmixed motive of mischief to the public or an individual. So, on the other hand, in a confederacy to raise the price of the funds, to sell bad liquors, to procure the release of a prisoner by entering insufficient bail, the motive is not prejudice to the public or an individual—but undue gain to the confederates or their friends; which is unlawful only in reference to the means used to procure it. I take it, then, a com-

Conclusion as stated by Judge Gib-  
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Dangers of confederacy.  
  
Form of in-  
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bination is criminal wherever the act to be done has a necessary tendency to prejudice the public, or to oppress individuals by unjustly subjecting them to the power of the confederates, and giving effect to the purposes of the latter, whether of extortion or mischief. According to this view of the law a combination of employers to depress the wages of journeymen below what they would be, if there was no recurrence to artificial means by either side, is criminal." Again, he says, "and it is the employment of an engine so powerful and dangerous, that gives criminality to an act that would be perfectly innocent, at least in a legal point of view, when done by an individual."

*Lambert v. The People.*

In 1827, the form of an indictment, charging conspiracy, was exhaustively considered in New York. In the case of *Lambert v. The People*,<sup>1</sup> the Supreme Court of the State of New York held that an indictment lies for a conspiracy to defraud an individual of his property; that the indictment may be in very general terms as to a description of the offence, its object, and the persons concerned in it. But upon error, the Court for the Trial of Impeachments and the Correction of Errors, being equally divided, it was decided by the casting vote of the President that it was defective, and the judgment was reversed.

The court held that where an indictment for a conspiracy does not set forth the object specifically, and show that such object was a legal crime, it should particularly set forth the means intended to be used by the conspirators, and show that those means are criminal. Otherwise it charges no crime which the law can notice. An indictment charging generally that the defendants conspired to defraud an individual, and not showing the intended means by which the fraud was to be compassed, is bad. Conspiracies were classified as follows:

1. Where the object is illegal.
2. Where the means are illegal.

In the first, as in a conspiracy to commit a criminal act, the means are immaterial. In the second, as in a conspiracy to commit an act not criminal in itself by criminal means, the object is immaterial and it is the

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<sup>1</sup> 7 Cowen, 166, reversed, *Lambert v. The People*, 9 Cowen (N. Y.) 578. The discussion is thorough and full of interest, and the conflicting opinions of Senator Spencer, who represented the majority, and Senator Stebbins, who represented the minority, will repay a close perusal.

illegality of the means used or intended to be used that constitutes the offence.

It was said by Senator Spencer, who delivered the opinion, which by the casting vote of the President became the opinion of the majority of the court, that where such a fraud as may be punished criminally is actually committed by several persons in pursuance of a conspiracy between them for that purpose, the conspiracy, as such, is not indictable, but the fraud only; while it was doubted whether an indictment would lie for a conspiracy to produce a mere private injury, which is not a legal crime and would not affect the public, nor obstruct public justice. A contrary view was stoutly maintained by Senator Stebbins.

The decision left the question in so much doubt,<sup>1</sup> that it was concisely declared by the Legislature that the crime should consist of Conspiracies, (1) to commit an offence; (2) to indict any one falsely and maliciously; (3) falsely to move or maintain a suit; (4) to cheat and defraud any one by criminal means, or by means, which, if executed, would amount to a cheat; (5) to obstruct the course of justice or due administration of the law; to commit an act injurious to the public health, public morals, or trade and commerce.<sup>2</sup>

Some interesting cases arose in the Southern States. Conspiracy to defraud devisees by the destruction of a will, it was said that all conspiracies to injure others by perverting, obstructing, or defeating the course of public justice in a criminal or civil proceeding by the suppression or fabrication of evidence are indictable. The English authorities were carefully reviewed.

In *State v. Cawood*,<sup>3</sup> which was a conspiracy to accuse a man falsely of the theft of a bank note as a crime with

<sup>1</sup> See remarks of C. J. Savage in *People v. Fisher*, 14 Wendell (N. Y.) 17, A. D. 1835.

<sup>2</sup> Act. 10th, December, 1828. Revised Stats. of N. Y., 1st Edit., Vol. II, p. 691, Albany, 1829. It was also declared: "No conspiracy other than such as are enumerated in the last section are punishable criminally." This last clause abolished the Common law. A statute was enacted in New Jersey, which was an exact copy of the New York Revised statute, except this clause, and it was expressly held that the Common law offence of conspiracy is not abolished by the statute defining conspiracies in certain cases, but every conspiracy which was indictable before the statute at Common law is so still. *State v. Norton*, 3 Zabriskie (N. J.), 33, A. D. 1850.

<sup>3</sup> *State v. De Witt et al.*, 2 Hill, (S. C.), 282, A. D. 1831.

<sup>4</sup> *State v. Cawood*, 2 Stewart (Ala.), 360, A. D. 1830.

a view to extorting money, Collier, J., relying principally upon the cases reported in the New York City Hall Recorder, which he said had been "argued by the most distinguished lawyers of New York, and determined by some of the ablest jurists of that State," held that a conspiracy to do an unlawful act to the injury of another is sufficient to sustain an indictment for a conspiracy, and it is not necessary that such an act be actually committed.

**Conspiracy to cheat** In *State v. Younger et al.*,<sup>1</sup> C. J. Taylor, after reviewing some of the English authorities, but relying chiefly on 1 Hawkins 446, sec. 2, held that a conspiracy by two to cheat a third person by making him drunk and playing falsely at cards with him, was indictable at Common law on the ground that a combination by two or more to do an unlawful act, or one prejudicial to another, is indictable at Common law.

**Conspiracy to murder. A joint offence.** In *State v. Tom*, a slave,<sup>2</sup> which was a conspiracy to murder, unaccompanied by an intent to rebel or to make an insurrection within the meaning of the Act of 1802 to prevent conspiracies and insurrections among slaves, C. J. Henderson and Ruffin, J. elaborately consider conspiracy as a joint offence, and hold that in an indictment against two, the acquittal of one is necessarily the acquittal of the other.

**Early New Jersey doctrine. Conspiracy must be to commit some offence in itself indictable.** In the State of New Jersey an effort was made to limit the extent to which the law could be carried. In the *State v. Rickey*,<sup>3</sup> it was held that an indictment will not lie for a conspiracy to commit a civil injury of any description that is not in itself an indictable offence, and hence it was not indictable for several persons to conspire to obtain money from a bank by drawing checks upon it when they had no funds there. After an elaborate examination of all of the authorities, and a severe criticism of those which he admits to be adverse, Judge Ford declares: "I say, after a full examination, that there is no adjudged case of authority where conspiracy has been held to lie unless for an indictable offence independent of the conspiracy." And, again, "conspiracy is limited, at least, to combinations to commit an act, which, if committed, would be an indictable offence." He shows further that, according to the English books, an indictment lies for a conspiracy by two or more to commit murder, homicide, treason,

<sup>1</sup> *State v. Younger*, 1 Devereux (N. C.), 357, A. D. 1827.

<sup>2</sup> *State v. Tom*, a slave, 2 Devereux (N. C.), 569, A. D. 1830.

<sup>3</sup> *State v. Rickey et al.*, 4 Halsted (N. J.), 293, A. D. 1827.

arson, rape, burglary, forgery, assault, battery, mayhem, larceny, escape, rescue, extortion, bribery, malicious mischief, offences against public health, the public peace, police and economy, and every other species of crime and misdemeanor, although such crime or misdemeanor was never perpetrated, but only meditated or considered in the mind, but the law confined it to this—that the offence must be indictable." He denied that a combination to prejudice a private person or corporation, in property, trade, or reputation, is indictable as a conspiracy, and reiterated that "it may be laid down as a settled rule that an indictment will not lie for a conspiracy to commit a civil injury of any description that is not in itself an indictable offence."

This decision, although contrary to the generally accepted view, was spoken of in terms of respect by C. J. Shaw in *Comm. v. Hunt*,<sup>1</sup> but in *State v. Norton*,<sup>2</sup> it was distinctly overruled. C. J. Green says: "the great weight of authority, the adjudged cases, no less than the most approved elementary writers sustain the position that a conspiracy to defraud individuals or a corporation of their property may in itself constitute an indictable offence, though the act done or proposed to be done, in pursuance of the conspiracy, be not in itself indictable." He doubted whether a conspiracy to injure or defraud an individual, or to commit a civil injury, by means not in themselves criminal, is a misdemeanor at Common Law, but declared that a conspiracy to defraud a bank of issue, so that the securities held by the public are impaired, is an offence of so public a nature that it is indictable at Common law.<sup>3</sup>

The next case of importance arose in Massachusetts—that of *Comm. v. Hunt*.<sup>4</sup> There the defendants were charged with forming themselves into a society, and agreeing not to work for any person, who should employ any journeyman or other person, not a member of such society, after notice given him to discharge such workmen.

The case defines the extent to which the Common law had been adopted, and points out that authorities based upon British Statutes relating to laborers are not to be followed. C. J. Shaw delivered the opinion.

*State v. Rickey* overruled.

<sup>1</sup> *Comm. v. Hunt*, 4 Metcalf (Mass.), 125. A. D. 1842.

<sup>2</sup> *State v. Norton*, 3 Zabriskie (N. J.), 33. A. D. 1850.

<sup>3</sup> C. J. Green also says that the opinion of Judge Ford is not the opinion of the Court; that Justice Drake clearly intimates that he did not concur.

<sup>4</sup> *Comm. v. Hunt*, 4 Metcalf (Mass.), 111, A. D. 1842.

Extent of adoption of Common law. He says: "We have no doubt, that by the operation of the Constitution of this Commonwealth, the general rules of the Common law, making conspiracy an indictable offence are in force here, and that this is included in the description of laws which had, before the adoption of the Constitution, been used and approved in the Province, Colony, or State of Massachusetts Bay, and usually published in the courts of law. \* \* \* \* Still it is proper in this connection to remark that although the Common Law in regard to Conspiring in this Commonwealth is in force, yet it will not necessarily follow that every indictment of Common Law for this offence is a precedent for a similar indictment in this State. The general rule of the Common Law is, that it is a criminal and indictable offence for two or more to confederate and combine together by concerted means, to do that which is unlawful or criminal, to the injury of the public or parties or classes of the community, or even to the rights of an individual. This rule of law may be equally in force as a rule of the Common Law in England and in this Commonwealth; and yet it must depend upon the local laws of each country to determine whether the purpose to be accomplished by the combination, or the concerted means of accomplishing it be unlawful or criminal in the respective countries.

Qualification stated —.

British statutes as to laborers not in force. All those laws of the parent country, whether rules of the Common Law or early English statutes, which were made for the purpose of regulating the wages of laborers, the settlement of paupers, and making it penal for any one to use a trade or handicraft to which he had not served a full apprenticeship—not being adapted to the circumstances of our colonial condition—were not adopted, used or approved, and therefore do not come within the description of the laws adopted and confirmed by the provision of the Constitution already cited. This consideration will do something towards reconciling the English and American cases, and may indicate how far the principles of the English cases will apply in this Commonwealth, and show why a conviction in England in many cases would not be a precedent for a like conviction here."

The cases reviewed in this chapter lie at the foundation of the American law, and here we can terminate our inquiry into the origin of our law of Conspiracy. They state the principles and trace the bounds of the offence. They are constantly cited as authority, and may be termed leading cases. They were ably argued and carefully considered, and occurring at the formative

period of our jurisprudence, constitute the base about which subsequent decisions crystallized. They are the roots from which the law has started upon a course of vigorous growth and never-ceasing application. The source is the Common Law, yet, in its application to our different institutions and relations, an indictment is sometimes upheld here which would not be sustained in England, or overturned here, while upheld in England.

## CHAPTER II.

## THE NATURE OF THE CRIME.

*Section I.—At Common Law.**Section II.—By Statute.*

## SECTION I.

*At Common Law.*

Two general definitions of conspiracy are to be found in the books.

Lord Denman's anti-  
thesis.

The first is Lord Denman's celebrated antithesis that "an indictment for conspiracy ought to show, either that it was for an unlawful purpose, or to effect a lawful purpose by unlawful means."<sup>1</sup> Of this, Lord Denman himself subsequently remarked: "I do not think the antithesis very correct,"<sup>2</sup> and in a still later case,<sup>3</sup> he explained the meaning of the phrase as being a limitation and not a definition by the observation "the words 'at least' ought to accompany that."<sup>4</sup>

C. J. Shaw's  
definition.

The second definition, and the one most commonly found in the American cases, is that given by Chief Justice Shaw of Massachusetts in *Comm. v. Hunt*,<sup>5</sup> where he says: "Without attempting to review or reconcile all the cases, we are of opinion that as a general description, though perhaps not a precise or accurate definition, a Conspiracy must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means. We use the terms criminal or unlawful, because it is manifest that many acts are unlawful, which are not punishable by indictment

<sup>1</sup> Jones' case, 4 B. & Ad. 345, (A. D. 1832.) Richardson's case., 1 M. & Rob., 402, (1834). R. v. Seward, 1 A. & E., 706, (A. D. 1834).

<sup>2</sup> Reg. v. Peck, 9 A. & E. 686, (A. D. 1839).

<sup>3</sup> R. v. King, 7 Q. B. 782, (1844).

<sup>4</sup> See Wright, *ante* pp. 49, 50.

<sup>5</sup> Comm. v. Hunt, 4 Metcalf (Mass.), p. 111. A. D. 1842.

or other public prosecution, and yet there is no doubt, we think, that a combination by numbers, to do them would be an unlawful conspiracy and punishable by indictment," and, after giving illustrations, he adds "but yet it is clear that it is not every combination to do unlawful acts to the prejudice of another, which is punishable as conspiracy."

This definition has been very generally adopted.<sup>1</sup> It

<sup>1</sup> State *v.* Hewett, 31 Maine, 396. State *v.* Ripley, *Ibid.*, 386. State *v.* Mayberry, 48 Maine, 218. State *v.* Rowley, 12 Conn., 112. Alderman *v.* People, 4 Mich., 414. State *v.* Burnham, 15 N. H., 396.

*Additional Definitions.* In Johnson *v.* The State, 2 Dutcher, (N. J.), 313, J. Haines defines a conspiracy as follows: "A confederation of two or more persons wrongfully to prejudice another in his property, person or character, or to injure public trade, or to affect public health, or to violate public policy, to obstruct public justice, or to do any act in itself illegal."

Mr. Bishop defines the offence as follows: "Conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end." Bishop on Crim. Law, 7th edit. vol. II, § 171. "By 'corrupt,' in this definition, is meant an evil purpose, but not necessarily an intent to do what, if accomplished by one alone, would be indictable. A like signification is here attached to 'unlawful'; many things are unlawful which are not indictable, and a combination to do what would not be indictable if actually executed by one, constitutes in many circumstances an indictable conspiracy. Again, a conspiracy is a mere 'agreeing together,'—not necessarily otherwise an act,'" *Ibid.* §. 172. In another place the same writer says: "The reader should bear in mind, that, unlawful, means contrary to law, and many things are contrary to law while not subjecting the doer to a criminal prosecution. Therefore, in the language of Cockburn, C. J., 'it is not necessary in order to constitute a conspiracy, that the acts agreed to be done should be acts, which if done, would be criminal. It is enough if the acts agreed to be done, although not criminal, are wrongful; that is amount to a civil wrong,'" Reg. *v.* Warburton, Law Rep. 1 C. C., 274. And he adds, somewhat significantly, "but though nothing contrary to this doctrine is actually held by our courts, it is so often overlooked by American Judges, and such confusion comes in consequence, that a little repetition of the proposition is necessary." *Ibid* § 178.

It is clear that the weight of authority is against the recent Editor of Greenleaf on Evidence. See post p. 115, note 1. Also, views expressed on pp. 123-24.

The English Commissioners, in their report of 1843, proposed the following: "The crime of conspiring consists in an agreement of two persons (not being husband and wife), or more than two persons, to commit a crime, or fraudulently or maliciously to injure or prejudice the public or any individual person." 7th Rep. Crim. Law Com. 1843, p. 275. Act of Crimes and Punishments, pub. 1844, p. 209. See a similar definition, in substance, 4th Rep. of Com. of 1845, A. D., 1848, p. 65. See State *v.* Murphy, 6 Ala., 765. See also 3 Chitty's Crim. Law, \*1139. 3d Amer. Edit. by Perkins, 3 Russell on Crimes \*116, 9th Amer. Edit. by Sharswood.

Meaning of  
the words  
"unlawful or  
illegal."

must be observed, however, that while there is a general concurrence of opinion as to the most expressive features of the crime, harmony does not exist as to the extent or meaning of the phrase "unlawful or illegal." All concede that combinations between two or more persons are indictable when directed to the accomplishment of a criminal object, or of an indifferent object by criminal means, but as soon as an attempt is made to go beyond these limits hesitation and disagreement arise. Is the term "unlawful," or its synonym "illegal" to be treated as the equivalent of the word "criminal," importing something, either as an end or as means, prohibited by the criminal law and punishable by the infliction of a penalty? Or may it not also mean "wrongful," in the sense of subjecting the wrongdoer to a civil sanction? Or can it be taken in the still broader sense in which it is applied to contracts in restraint of trade, or those in furtherance of immorality which the law refuses to enforce?<sup>1</sup>

Result of the  
cases.

A review of the decisions will show that in some of the States it is held that to make a conspiracy indictable the object or the means must be *mala in se* or *mala prohibita*: in others, that in addition to these, there are many combinations where neither the object nor the means are criminal, or even unlawful, in the broader sense, but where the conspiracy is indictable because the fact of confederacy involves mischief to the public: and in others a wider range is taken, and conspiracies are held to be indictable wherever the motive is malicious, and the effect is to subject an individual to oppression and injury.<sup>2</sup> Let us review the classes in their order.

#### I. CONSPIRACIES TO BECOME THE SUBJECT OF AN INDICTMENT MUST BE DIRECTED TO A CRIMINAL OBJECT, OR TO AN INDIFFERENT OR LAWFUL OBJECT BY CRIMINAL MEANS.

To this class belong the early New Jersey decision

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<sup>1</sup> See Wright, ante, pp. 50-51, for a discussion of the meaning of the words "unlawful" and "illegal." See Bishop on Crim. Law, 7th Edit., Vol. II. §§ 171—172 & 178, quoted ante p. 111, in note 1.

<sup>2</sup> Compare Comm. v. Eastman, 1 Cushing, (Mass.), 189; Comm. v. Shedd, 7 Cush., 514; State v. Rickey, 4 Halsted (N. J.), 293; Alderman v. The People, 4 Mich., 414; State v. Jones, 13 Iowa, 269; State v. Stevens, 30 Iowa, 392, with Comm. v. Judd, 2 Mass., 329; State v. Buchanan, 5 Harris & Johnson (Md.), 317; State v. Burnham, 15 N. H., 396; State v. Parker, 43 N. H., 83; State v. Norton, 3 Zab. (N. J.), 33; State v. Donaldson, 3 Vroom (N. J.), 151; Smith v. People, 25 Ill., 17; Comm. v. Carlisle, Brightly, (Pa.), 36.

of State *v.* Rickey,<sup>1</sup> the later decisions in Massachusetts and Vermont; those of New York, Michigan, Connecticut, and Iowa.

The early cases in Massachusetts were not restricted to these bounds,<sup>2</sup> nor would the language of C. J. Shaw, in the definition quoted, seem to countenance such restrictions, but in Comm. *v.* Eastman<sup>3</sup> and Comm. *v.* Shedd,<sup>4</sup> it is distinctly held that the object or means must appear on the face of the indictment to be criminal. In the first of these cases, J. Dewey used this language. "The offence of Conspiracy, in one respect, is doubtless peculiar. It may, unlike most offences, be committed without an overt act. A criminal purpose to do an unlawful act or to do a lawful act by criminal means, mutually assented to or agreed upon by two or more persons, may, by such assent and agreement, ripen into crime, although no act be done in pursuance of it. *The act itself, or the means must, on the face of the indictment, be shown to be indictable.*"

*The object or means must be shown to be indictable.*

The words cheat and defraud do not import any known Common Law offence. If punishable at all as a crime, it is only where the cheat is effected by false tokens, false pretences or the like; to make such an object of conspiracy a criminal act, the combination or agreement must be to cheat and defraud in some of the modes made criminal by the statute, and the indictment must contain allegations which show that the cheat and fraud agreed upon are embraced by some of the provisions of the statute, and that if perpetrated they would be punishable as a criminal offence."

In Comm. *v.* Shedd,<sup>5</sup> the same judge said: "It is well settled that a general allegation that two or more persons conspired to effect an object criminal in itself, as to commit a misdemeanor, or a felony is quite sufficient, although the indictment omits all charges of the particular means to be used. It is equally well settled that a general charge of a conspiracy to effect an object not criminal is not sufficient. The charge of such a conspiracy is to be accompanied with the further state-

<sup>1</sup> State *v.* Rickey, 4 Halsted (N. J.), 293.

<sup>2</sup> Comm. *v.* Ward, 1 Mass., 473, A. D. 1805. Comm. *v.* Tibbetts, 2 Mass. 536, A. D. 1805. Comm. *v.* Judd, 2 Mass., 329, A. D. 1807. That the cases belonging to this *first class* do not fairly represent the present state of the law appears from a review of those contained in classes *second* and *third*. Post, pp. 115—119. See, also, Bishop on Crim. Law. 7th Edit. Vol. II. §§ 171, 172, 178, quoted ante, p. 111, in note 1.

<sup>3</sup> Comm. *v.* Eastman, 1 Cush. (Mass.), 189, A. D. 1848.

<sup>4</sup> Comm. *v.* Shedd, 7 Cush., 514, A. D. 1851.

<sup>5</sup> Comm. *v.* Shedd, 7 Cush. (Mass.), 514, (A. D. 1851).

ment of the means the conspirators concerted and agreed to use to effect the object, and those means must appear to be criminal."<sup>1</sup>

The same view is taken by Copeland, J., in the well considered case of *Alderman v. People*.<sup>2</sup> After ably reviewing many decisions and admitting that there are many the other way, he says: "From the whole current of decisions the following principles are clearly deducible: 1. That to constitute an indictable conspiracy there must be a combination of two or more persons to commit some act known as an offence at Common Law, or that has been declared such by statute. 2. If the conspiracy be to commit an offence known and recognized as an offence at Common Law, so that by describing it by the term by which it is generally known, the nature of the offence is clearly indicated, then it will be only necessary to use such term in describing the object of the conspiracy. 3. If on the contrary, the combination be to do an act, not in itself unlawful, but which it is agreed to accomplish by criminal or unlawful means, then those means must be particularly set forth and be such as constitute an offence either at Common Law or by statute." He vindicates this rule by saying: "The gist of the offence in Conspiracy is the unlawful combination and agreement. The combination and agreement, the intent to commit the illegal act, constitute the offence, and in this respect it diverges from the general rule of the Criminal Law, but there seems to be no good reason for going further and judicially determining, in cases as they arise, acts to be an offence which are not so at Common Law, nor have been declared such by any statute, and for departing entirely from the general rule of pleading in criminal cases that such facts must be stated upon the record as in the judgment of law are sufficient to constitute an offence." To the same effect is the recent case of *State v. Stevens*,<sup>3</sup> "It has been settled by this Court, after a full examination of the English and American authorities, that an

<sup>1</sup> To the same effect is *Comm. v. Wallace*, 16 Gray (Mass.), 221.

<sup>2</sup> *Alderman v. People*, 4 Mich., 414 (A. D. 1857). A broader view was taken in *People v. Richards*, 1 Mich., 216; but in *People v. Clark*, 10 Mich., 310, the Court fell back upon the word "unlawful" instead of "criminal." Judge Campbell said: "If the end be unlawful, that and that only need be alleged; but if the end be lawful, the unlawful means must appear. Every criminal charge must show on its face what criminality is alleged against the defendant."

<sup>3</sup> *State v. Stevens*, 30 Iowa, 392, A. D. 1872. But see qualifications stated in *State v. Ormiston*, 66 Iowa, 143, A. D. 1885.

indictment for conspiracy must show on its face that the object of the conspiracy is a criminal one, or else, if the purpose thus disclosed does not impute a crime, then other facts should be alleged and set forth, so as to show that the means to be employed are *criminal*.<sup>1</sup>

**II. CONSPIRACIES ARE INDICTABLE WHERE NEITHER THE Second Class.  
OBJECT NOR THE MEANS ARE CRIMINAL, BUT WHERE  
MISCHIEF TO THE PUBLIC IS INVOLVED.**

To this class belong the later New Jersey decisions, the early Massachusetts cases, those of Pennsylvania, Illinois, South Carolina, Maryland, and New Hampshire.

The earliest cases in Massachusetts rest upon this ground. *Comm. v. Ward*,<sup>2</sup> charged a conspiracy to cheat an individual out of goods and merchandize, while in *Comm. v. Judd*,<sup>3</sup> which was that of a conspiracy to manufacture base and spurious indigo, with the fraudulent intent to sell it as a genuine article. C.

<sup>1</sup> To the same effect are *State v. Jones*, 13 Iowa, 269. *State v. Potter*, 28 Iowa, 554. *State v. Keach*, 40 Vt., 113. *State v. Rickey*, 4 Halsted (N. J.), 293. *State v. Hewett*, 31 Maine, 396. *State v. Ripley*, Ibid. 384. *State v. Roberts*, 34 Maine, 322. In *State v. Ripley* it was said: "if the conspiracy is to do an act which, if done, would be a criminal act, the offence is perfect with reference to the means used, and it is necessary that this criminal purpose should be so especially alleged as to be well understood. If the conspiracy consists in the unlawful means to be employed, those means which are relied on as giving the wrongful agreement a criminal character should be stated." Within the same line of reasoning, because the offence charged was held to be a statutory crime, *State v. Rowley*, 12 Conn., 101. *State v. Mayberry*, 48 Maine, 218. With regard to the decision in *State v. Jones*, 12 Iowa, 269, which was said in *State v. Stevens*, 30 Iowa, 392, to be "a full examination of the English and American authorities," it must be observed that the examination was neither full nor accurate. The only authorities which were quoted correctly were the Massachusetts cases of *Comm. v. Eastman*, 1 Cushing, 189, & *Comm. v. Shedd*, 7 Cush., 514, and the Michigan decision of *Alderman v. People*, 4 Mich., 414. The remaining authorities quoted were either never read, or else were misunderstood. *Comm. v. Burnham*, 15 N. H., announces expressly the opposite doctrine. *Lambert v. The People*, 9 Cowen, (N. Y.), 578, was determined by the casting vote of the President of the Court, and required the aid of a statute. *State v. Rickey*, 4 Halsted (N. J.), has been overruled; while *Hartmann v. Comm.*, 5 Barr, (Pa.), 60, announces no such doctrine. The error seems due to a hasty reading of a note to *Comm. v. Eastman*, 1 Cush. *ut supra*, as published in Vol. I, Heard & Bennett's Leading Crim. Cases. It is well to note this, as the Iowa decisions are being constantly quoted in support of the narrower rule. But see *State v. Ormiston*, 66 Iowa, 143.

<sup>2</sup> *Comm. v. Ward*, 1 Mass., 473.

<sup>3</sup> *Comm. v. Judd*, 2 Mass., 329.

J. Parsons held that a combination to do a lawful act by "unlawful" means (i. e. means not criminal) is always dangerous to the public peace and to private security.

In *State v. Buchanan*,<sup>1</sup> it was said that "every conspiracy to do an unlawful act, or to do a lawful act for an illegal, fraudulent, malicious, or corrupt purpose, or for a purpose which has a tendency to prejudice the public in general is at Common law an indictable offence, though nothing be done in execution of it, and no matter by what means the conspiracy was intended to be effected, which may be perfectly indifferent and make no ingredient of the crime."

Neither the object nor the means need be criminal, if the conspiracy involve mischievous to the public.

In none of these cases is the word "criminal" used in the definition of the offence, nor were the cases before the courts those of Common law or statutory crimes considered either as to the object or the means.

In *State v. Burnham*,<sup>2</sup> it was held that a Conspiracy to do an unlawful act, or a lawful act by unlawful means, whether to the prejudice of an individual or of the public is indictable, and that it is not necessary that its object should be the commission of a crime. It was also held that where the object to be attained by the conspiracy is lawful, the illegal means must be stated and proved, *but it is not necessary that the illegal means should be an indictable offence. It will be sufficient if they be fraudulent and immoral.*"

Although in the case of *State v. Rickey*,<sup>3</sup> it was held that an indictment will not lie for a conspiracy to commit a civil injury of any description that is not in itself an indictable offence, the later New Jersey decisions distinctly overrule this narrow doctrine. C. J. Green, in *State v. Norton*,<sup>4</sup> expressly says: "The greater weight of authority, the adjudged cases, no less than the most approved elementary writers, sustain the position that a conspiracy to defraud individuals or a corporation of their property may in itself constitute an indictable offence, though the act done or proposed to be done, in pursuance of the conspiracy, be not in itself indictable," and he puts the case under consideration upon the ground

<sup>1</sup> *State v. Buchanan*, 5 Harris & Johnson (Md.), 317.

<sup>2</sup> *State v. Burnham*, 15 New Hampshire, 396. Affirmed in *State v. Parker*, 43 N. H., 83, where it is said: "Not that those means must appear to be criminal, as seems to be held in *Comm. v. Shedd*, 7 Cushing, but that it will be enough if they are corrupt, dishonest, fraudulent and immoral and in that sense illegal."

<sup>3</sup> *State v. Rickey*, 4 Halsted (N. J.), 273, A. D. 1827.

<sup>4</sup> *State v. Norton*, 3 Zab. (N. J.) 33, A. D. 1850.

that a conspiracy to defraud a bank of issue, so that the securities held by the public are impaired, is an offence of so public a nature that it is indictable at Common law. To the same effect are the later cases of *State v. Young et al.*,<sup>1</sup> *State v. Donaldson*,<sup>2</sup> *Johnson v. The State*,<sup>3</sup> *State v. Cole*,<sup>4</sup> *State v. Hickling*,<sup>5</sup> and *Noyes v. State*,<sup>6</sup> although in some of these cases the mischief was individual as well as public. Thus, in *State v. Cole*,<sup>7</sup> it was held that a combination between one member of a partnership and a third person to issue and put in circulation the notes of the firm drawn by such partner for the purpose of paying his individual debts, Many acts are the intention of the combination being fraudulent, is an punishable indictable conspiracy. It was contended that such an act was but a civil injury and not a breach of public law, but this C. J. Beasley held to be a fallacious view. which are not He said: "The query is not whether it is an indictable so, when done offence for a member of a firm to direct a partnership by an individual note to alien purposes, but whether it is not such crime for him to do such act by concert with a third person, the intention of the two being fraudulent, and the act being carried into effect by deceitful devices. It is these added characteristics of the affair, which, in my view, heighten the malfeasance into punishable crime." In *State v. Rowley*,<sup>8</sup> it is said, "many acts, which, if done by an individual, are not indictable, are punishable criminally, when done in pursuance of a conspiracy among numbers."

The leading case of *Smith v. The People*,<sup>9</sup> decided by the Supreme Court of Illinois, maintains the doctrine that it is indictable to conspire to do an unlawful act by any means, whether criminal or not, or to conspire to do any act by unlawful means. The case was one of a combination to seduce a female, and it was held to be a criminal conspiracy, although seduction was not an offence at Common Law, and no statute in Illinois made it so.

The decision was delivered by Caton, C. J., who said: "To attempt to define the limit or extend the law of con-

<sup>1</sup> *State v. Young et al.*, 8 Vroom (N. J.), 184.

<sup>2</sup> *State v. Donaldson*, 3 Vroom, 151.

<sup>3</sup> *Johnson v. The State*, 2 Dutcher, (N. J.), 313; *Ibid.*, 5 Dutch., 453.

<sup>4</sup> *State v. Cole*, 10 Vroom, 324.

<sup>5</sup> *State v. Hickling*, 12 Vroom, 208.

<sup>6</sup> *Noyes v. State*, 12 Vroom, 418.

<sup>7</sup> *State v. Cole*, 10 Vroom, 324. See, also, *Queen v. Warburton*, L. R., 1 Crown C. Res., 274.

<sup>8</sup> *State v. Rowley*, 12 Conn., 101.

<sup>9</sup> *Smith et al. v. The People*, 25 Ill., 17, A. D. 1860.

spiracy, as deducible from the English decisions, would be a difficult, if not impracticable task, and we shall not attempt it at the present time. We may safely assume that it is indictable to conspire to do an unlawful act by any means, and also that it is indictable to conspire to do any act by unlawful means. In the former case, it is not necessary to set out the means used, while in the latter, it is, as they must be shown to be unlawful. But the great uncertainty, if we may be allowed the expression, is as to what constitutes an unlawful end, to conspire to accomplish which, is indictable without regard to the means to be used in its accomplishment.

A combination to do an unlawful act is punishable as a conspiracy, even though the act attempted is not a crime *per se* or by statute. And, again, what means are unlawful to accomplish a purpose not in itself unlawful. As this indictment falls under the first class, we shall confine ourselves to that. If the term unlawful means *criminal*, or an offence against the criminal law, and as such punishable, then the objection taken to this indictment is good, for seduction by our law is not indictable and punishable as a crime. But by the Common Law governing Conspiracies the term is not so limited, and numerous cases are to be found where convictions have been sustained for conspiracies to do unlawful acts, although those acts are not punishable as crimes. Nor yet would it be quite safe to say that the term unlawful as here used includes every act which violates the legal rights of another, giving that other a right of action for a civil remedy. And we are not prepared to say where the line can be drawn. It is sufficient for the present case to say that conspiracies to accomplish purposes which are not by law punishable as crimes, but which are unlawful as violations of the rights of individuals, and for which the civil law will afford a remedy to the injured party and will at the same time and by the same process punish the offender for the wrong and outrage done to society, by giving exemplary damages beyond the damages actually proved, have in numerous instances been sustained as Common law offences. The law does not punish criminally every unlawful act, although it may be a grievous offence to society. And in determining what sort of conspiracies may or may not be entered into without committing an offence punishable by the Common Law, regard must be had to the influence, which the act, if done, would actually have upon society, without confining the question to the inquiry whether the act might itself subject the offender to criminal punishment. \* \* \*

If there be any act which should be regarded as unlaw-  
(4800)

ful in the sense of the law of conspiracy, but which is not punishable as a crime, it is this very act. We do not hesitate to hold that a conspiracy to seduce, whether the means to be used be unlawful, or criminal, or not, is a crime at Common Law, and that it is the duty of the courts to protect society against such conspiracies by their punishment.”<sup>1</sup>

In *State v. Cardoza*<sup>2</sup> it was held that a conspiracy on the part of a public officer and others, with intent to cheat and defraud, through the forms of his own office, is a conspiracy to injure the public and imports a crime, independently of the means used for that purpose, and is indictable at Common Law. The distinction is well drawn between acts tending directly to the public injury, and acts primarily affecting individuals and made criminal only as they affect the administration of justice, or as they are to be accomplished by means of false tokens and pretences.

Upon the same ground—that of mischief to the public—rest the cases of *State v. De Witt*<sup>3</sup> and *State v. Shooter*.<sup>4</sup> In the first, the act in question was the destruction of a will, while the latter was one of an attempt to fabricate evidence by procuring a deed through false pretences. In both the object aimed at by the conspirators primarily affected individuals alone, but became indictable through the fact that the creation of false evidence or the destruction of true evidence tended to injure and impair the administration of justice. Upon the same ground rest conspiracies to injure health, to vend unwholesome food, to manufacture base articles for public sale, to imitate good ones, and to defraud the revenue.<sup>5</sup>

Conspiracy to  
cheat the  
State is in-  
dictable.

So also all  
conspiracies  
involving  
public mis-  
chief.

### III. CONSPIRACIES ARE INDICTABLE WHERE NEITHER THE OBJECT NOR THE MEANS ARE CRIMINAL, BUT WHERE IN- JURY RESULTS TO INDIVIDUALS.

To this class belong the decisions in Pennsylvania, New Jersey, North Carolina, Texas, New Hamp-

<sup>1</sup> See *Anderson v. Comm.*, 5 Randolph (Va.), 627. Held that the seduction and abduction of a female over 16 years of age (not being within the statute) cannot be punished by indictment. It would have been otherwise had a conspiracy been charged. See also *State v. Murphy*, 6 Ala., 765. *Mifflin v. Comm.*, 5 W. & S. (Pa.), 461.

<sup>2</sup> *State v. Cardoza*, 11 S. C., 195, A. D. 1878.

<sup>3</sup> *State v. De Witt*, 2 Hill (S. C.), 282.

<sup>4</sup> *State v. Shooter*, 8 Richardson (S. C.), 72.

<sup>5</sup> *State v. Cardoza*, 11 S. C., 195.

Conspiracies  
indictable  
when op-  
pressive to  
individuals.

shire, and generally, all cases of strikes or boycotts. Although injury to the public may result from the acts conspired to be done, yet injury or malice toward an individual is the controlling feature, resulting from the weight and power of numbers.<sup>1</sup> In *Comm. v. Carlisle*,<sup>2</sup> Judge Gibson shows that the offence of conspiracy had become so far enlarged as to include cases where the act was not only lawful in the abstract, but was also to be accomplished exclusively by the use of legal means, and that it is the motive for combining, or the nature of the object to be attained as a consequence of the lawful act which is the discriminative circumstance, and he tersely says "I take it, then, a combination is criminal wherever the act to be done has a necessary tendency to prejudice the public *or to oppress individuals by unjustly subjecting them to the power of the confederates*, and giving effect to the purposes of the latter, whether of extortion or mischief." The case was one of a combination of employers to depress the standard of wages.

The converse of this case arose in *State v. Donaldson*,<sup>3</sup> where it was held to be indictable for several employés to combine and notify their employer that unless he discharged certain enumerated persons they would in a body quit his employment. In delivering the opinion of the court, C. J. Beasley, after discussing the cases generally wherein indictments will lie, says an indictment can be sustained, "where the confederacy, having no lawful aim, tends simply to the oppression of

<sup>1</sup> As Mr. Bishop says: "There are circumstances in which combinations of persons, for the promotion of evil, portend a danger, and call for legal interposition, when the single efforts of individuals might pass unnoticed by the law." *Bishop Crim. Law*, 7th Edit. Vol. II. § 180.

The English criminal law commissioners use this language: "The general principle on which the crime of conspiracy is founded is this, that the confederacy of several persons to effect any injurious object creates such a new and additional power to cause injury as requires criminal restraint; although none would be necessary were the same thing proposed or even attempted to be done, by any person singly." 7th Rep. Crim. Law Com. 1843, p. 90. Maintenance, unlawful assemblies, riots and routs partake of this element. Congregated numbers sometimes supply in law the place of actual violence; as where three persons committing a trespass upon property in the presence of its possessor, without force, were held indictable therefor, while one alone would not have been so unless he had used force. *State v. Simpson*, 1 Dev. (N. C.), 504. Hence, as Mr. Bishop concludes, in conspiracy, the unlawful thing proposed, whether as a means or an end, need not be such as would be indictable if proposed or even done by a single individual. *Cr. Law*, 7 Edit. Vol. II, § 181.

<sup>2</sup> *Comm. Carlisle*, Brightly's Rep. (Pa.), 36, A. D. 1821.

<sup>3</sup> *State v. Donaldson*, 3 Vroom (N. J.), 151.

individuals. “\* \* \*” In my opinion this indictment sufficiently shows that the force of the confederates was brought to bear upon their employer for the purpose of oppression and mischief, and that this amounts to a conspiracy.”

So in *State v. Cole*,<sup>1</sup> it was held that a combination between one member of a partnership and a third person to issue and put in circulation the notes of the firm, drawn by such partner, for the purpose of paying his individual debts, the intention of the combination being fraudulent, is an indictable conspiracy.

Even the existence of a civil remedy is no bar to a Conspiracies prosecution, it being held that a conspiracy to slander oppressive to a person by charging him with a criminal offence is individuals indictable,<sup>2</sup> or, as was said in *State v. Buchanan*,<sup>3</sup> “the law punishes the act of conspiring together falsely to injure the reputation of another, maliciously to ruin him in his occupation, or fraudulently to cheat him of his property, no matter what the means.”

In North Carolina, two cases involving injury to an individual were sustained as criminal conspiracies. *State v. Younger*,<sup>4</sup> was that of a conspiracy to cheat one by making him drunk and playing falsely at cards with him. *State v. Earwood*,<sup>5</sup> was a conspiracy to take away the wife and chattels of another.

In Texas, in the case of *Lowery v. The State*,<sup>6</sup> the defendant and others started on a fox chase, but subsequently went to chasing cattle, which were killed. It was held that the case came within the rule of law that when a number of persons meet together for a different purpose, and afterwards join to execute one common purpose to the injury of the property of a third party, it is a conspiracy, and it is not necessary to prove any previous plan among them against the person intended to be injured.

In Pennsylvania, in the case of the *Morris Run Coal Co. v. Barclay Coal Co.*,<sup>7</sup> although not one of criminal conspiracy, the doctrine of *Comm. v. Carlisle*,<sup>8</sup> was reaffirmed. In *Twitchell v. The Commonwealth*,<sup>9</sup> Coulter, J., said: “All combinations in society to effect an evil

<sup>1</sup> *State v. Cole*, 10 Vroom (N. J.), 324. See also *Queen v. Warburton*, L. R. 1 Crown Cases Res., 274.

<sup>2</sup> *State v. Hickling*, 12 Vroom, 208.

<sup>3</sup> *State v. Buchanan*, 5 Harris & Johnson (Md.), 317.

<sup>4</sup> *State v. Younger*, 1 Devereux (N. C.), 357.

<sup>5</sup> *State v. Earwood*, 75 N. C., 210, A. D., 1876.

<sup>6</sup> *Lowery v. The State*, 30 Texas, 402, A. D. 1870.

<sup>7</sup> *Morris Run Coal Co. v. Barclay Coal Co.*, 68 Pa. St. R. 173.

<sup>8</sup> *Comm. v. Carlisle*, Brightly's Rep. (Pa.) 36.

<sup>9</sup> *Twitchell v. The Commonwealth*, 9 Pa. St. R., 211.

The law will protect individuals against conspiracies.

purpose are dangerous, and when their object and purpose is to cheat an individual by whatever means they are obnoxious to the criminal law. \* \* \* The concentrated energy of several combined wills, operating simultaneously and by concert upon any one individual, is dangerous even to the cautious and circumspect, but when it is brought to bear upon the unwary and unsuspecting it is fatal. It is therefore the business of the law to protect individuals from such conspiracies. It is not a crime punishable by the laws for an individual to marry a minor, although the parent of the female refuse his consent; but a conspiracy to effect and bring about such a marriage is indictable as was held in the case of Commonwealth *v.* Mifflin,<sup>1</sup> in which case, it is truly asserted to be settled law that there are acts, which though innocent in themselves, when done by an individual, are criminal when done by concert." It was said by Gilchrist, J., in State *v.* Burnham,<sup>2</sup> "Combinations against law or against individuals, are always dangerous to the public peace and to public security. To guard against the union of individuals to effect an unlawful design is not easy, and to detect and punish them is often extremely difficult. The unlawful confederacy is therefore punished to prevent any act in execution of it. This principle is at the foundation of adjudged cases upon this subject. But the law by no means intends to exclude society from the benefits of united effort for legitimate purposes and such as promote the well being of individuals or the public. It uses the word *conspiracy* in its *bad* sense. An act may be innocent without being indictable where the isolated acts of an individual are not so injurious to society as to require the intervention of the law. But when innocent acts are committed by members in furtherance of a common object, and with the advantages and strength which determination and union impart to them, they assume the grave importance of a conspiracy, and the peace and order of society require their repression."

When not indictable.

It is not, however, criminal to conspire to commit an act which amounts to a mere civil trespass as by maintaining flash boards on a dam.<sup>3</sup> This is similar to Lord Ellenborough's doctrine announced in Rex *v.* Turner.<sup>4</sup> Nor is it indictable to deprive a man of office in the county,

<sup>1</sup> Comm. *v.* Mifflin, 5 Watts & Serg. (Pa.), 461.

<sup>2</sup> State *v.* Burnham, 15 N. H. 396. A. D. 1844.

<sup>3</sup> State *v.* Straw, 42 N. H., 393.

<sup>4</sup> Rex *v.* Turner, 13 East., 228; overruled in Reg. *v.* Rowland, 5 Cox C. C., 490; 2 Dennison C. C. 388.

there being no overt acts,<sup>1</sup> nor for township officers to get public money into their hands, there being no overt acts<sup>2</sup>. Mere sympathy, not exhibited in overt acts,<sup>3</sup> is not sufficient, nor is mere preparation for crime indictable, where the statutes require overt acts to make the indictable. <sup>Acts not</sup>  
 crime complete.<sup>4</sup> A conspiracy to procure an over insurance,<sup>5</sup> or to sell a man an unsound horse,<sup>6</sup> if there be no fraudulent devices is not indictable. Nor is it indictable to agree to prosecute a person who is guilty, or against whom there is a reasonable ground of suspicion.<sup>7</sup> Nor is it indictable to conspire to induce liquor dealers to violate a law forbidding the sale of liquor on Sunday, in order to secure the informers' share of the penalty.<sup>8</sup> This is at variance with another decision that it is a conspiracy for two or more to act in concert in unlawful measures to enforce the Sunday liquor law, as by inducing a tavern keeper to furnish beer on Sunday, by artifice or persuasion.<sup>9</sup>

We must reserve a complete statement, analysis, and classification of the decisions for the next chapter, but a sufficient number of them has been reviewed to indicate the general character and scope of the offence.

It would appear that a conspiracy must be a combination of two or more persons by some concerted action to accomplish some criminal object; or some object not criminal by criminal means; or, some object not criminal by means which are not criminal, but where mischief to the public is involved; or, where neither the object nor the means are criminal, or even unlawful, but where injury and oppression to individuals are the result.

The writer is compelled to express his dissent from the opinion stated by a recent editor of Prof. Greenleaf's work upon Evidence, who has added a new section to the original text (Vol. iii, § 90 a. 13th edit.) as follows: "Without attempting to reconcile all the cases, a task nearly hopeless in the present undefined state of the law of conspiracy, a general rule may be deduced from

<sup>1</sup> *Rex v. Stratton*, 1 Campb., 549 n.

<sup>2</sup> *Horseman v. Reg.* 16 Up. Can., Q. B., 543.

<sup>3</sup> *People v. Leith*, 52 Cal., 251; *State v. Cox*, 65 Mo., 29; *Connoughty v. State*, 1 Wis., 169.

<sup>4</sup> *U. S. v. Nunnemacher*, 7 Biss., 111: *U. S. v. Goldberg*, Ibid. 175, Post pp. 133-4. <sup>5</sup> *Comm. v. Prius*, 9 Gray (Mass.), 127.

<sup>6</sup> *Rex v. Pywell*, 1 Stark, 402.

<sup>7</sup> *Comm. v. Tibbets*, 2 Mass., 536; *Comm. v. Dupuy*, Brightly's Rep. (Pa.), 44; But, see *Comm. v. Leeds*, 9 Phila., Rep., 569.

<sup>8</sup> *Comm. v. Kostenbader*, S. C. Pa., Mch. 1, 1886. In this case the Court below quashed the indictment on the ground that it did not charge an indictable offence. The judgment was affirmed by a divided Court. <sup>9</sup> *Comm. v. Leeds*, 9 Phila., 569.

Dissent from  
views ex-  
pressed by  
recent editor  
of Greenleaf  
on Evidence.

the current of well considered cases, that an indictable conspiracy must be a corrupt confederation to promote an evil in some degree *criminal*, or to effect some wrongful end by means having some degree of *criminality*. Although in some cases, it has been said, that, if the end is *unlawful*, concerted action to promote it is indictable, yet the word "unlawful" is to be taken in the sense of criminal, as it is unlawful to commit a trespass; still no indictment will lie for a conspiracy to commit such civil injury. Indeed, unless some element of a criminal nature enters into either the means to be used or the purpose to be effected, no indictment will lie for a conspiracy to do a private injury when a civil action will afford redress. \* \* \* \* \* There is, however, a disposition in the courts not to extend the law of conspiracy beyond its present limits, and to confine it, as is believed, within the definition above given." In our judgment this is a misstatement of the law, and is not justified by an examination of the authorities. The only cases which expressly announce such a limitation are those cited in illustration of Class I, ante p. 112, et seq. As we have shown, in reviewing the cases, cited in illustration of Classes II and III, the great stream of authority flows far beyond these narrow bounds, and establishes a much broader though less definite doctrine. Although it may be agreed with Mr. Wharton that this expansion has gone quite far enough, (See his views expressed in note, ante p. 93.) yet there can be no doubt that the law is not confined as stated by the editor of Greenleaf.\*

The gist of  
the offence is  
the corrupt  
agreement.

The fact of confederating is the gist of the offence, or, as C. J. Savage has said: *The conspiracy is the offence.*<sup>1</sup> The conspiracy itself is the crime. It is different from an indictment for stealing, or an action for trespass, where the offence consists of an act done.<sup>2</sup> The devising of means is not a constituent part of the offence, but an act done in pursuance of the original design. It is not the actual perpetration, but the original hatching of the plot which constitutes the offence.<sup>3</sup> The overt acts charged to have been done in pursuance of a conspiracy are mere matters of aggravation, and are not necessary to the consummation of the crime.<sup>4</sup>

\*See, also, Bishop on Criminal Law, 7th Edit., Vol. II, §§ 171-172, quoted ante, p. 111, in note, and *Mifflin v. Comm.*, 5 W. & S. (Pa.), 464; *State v. Younger*, 1 Dev. (N. C.), 357.

<sup>1</sup> *People v. Fisher*, 14 Wendell (N. Y.), 9.

<sup>2</sup> *Comm. v. Gillespie*, 7 S. & R. (Pa.), 469. Per Duncan, J.

<sup>3</sup> *Collins v. Comm.*, 3 S. & R. (Pa.), 220. Per Gibson, J.

<sup>4</sup> *Ibid.*

The unlawful agreement constitutes the gist of the offence, and therefore it is not necessary to charge the execution of the unlawful agreement, and when such execution is charged it is to be regarded as proof of the intent, or as an aggravation of the criminality of the unlawful combination.<sup>1</sup> The crime is consummate and complete by the fact of the unlawful combination, and therefore if the execution of the unlawful purpose be averred, it is by way of aggravation, and proof of it is not necessary to conviction, and therefore the jury may find the conspiracy and negative the execution, and it will be a good conviction.<sup>2</sup> The crime is effected the moment the confederation is complete though nothing be done in pursuance of the conspiracy.<sup>3</sup> In order to render the crime complete there is no occasion that any act should be done, or that any one should be aggrieved or defrauded in pursuance or in consequence of the unlawful agreement.<sup>4</sup> The offence of conspiracy is complete, although the parties conspiring do not proceed to effect the object for which they have so unlawfully combined.<sup>5</sup> The jury may find the conspiracy and negate the execution, and it will be a good conviction.<sup>6</sup> A conspiracy to commit a crime, and the commission of that crime are two separate and distinct offences.<sup>7</sup>

But an agreement to commit an act, unless it amounts to a conspiracy, is not indictable.<sup>8</sup> It is sufficient, however, if two or more in any manner, through any contrivance, positively or tacitly, come to a mutual understanding to accomplish a criminal or unlawful design.<sup>9</sup> The bare combination with the joint design is sufficient, but a mere<sup>10</sup> intention or solicitation is not sufficient;<sup>11</sup> nor is a mere passive cognizance of fraud, or of

It is not necessary that the conspiracy be executed.

<sup>1</sup> *Comm. v. Hunt*, 4 Metcalf, (Mass.), 111. Per Shaw, C. J.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Hazen v. The Comm.*, 11 Harris (Pa.), 362

<sup>4</sup> *Heine v. Comm.*, 10 Norris (Pa.), 148; see also, *Alderman v. People*, 4 Mich., 414; *State v. Burnham*, 15 N. H., 396; *Isaacs v. The State*, 48 Miss., 234; *People v. Geiger*, 49 Cal., 643; *State v. Sterling*, 34 Iowa, 443.

<sup>5</sup> *Johnson v. State*, 3 Texas, App. 590.

<sup>6</sup> *State v. Noyes*, 25 Vt., 415.

<sup>7</sup> *State v. Straw*, 42 N. H., 393.

<sup>8</sup> *Torrey v. Field*, 10 Vt., 353.

<sup>9</sup> *U. S. v. Babcock*, 3 Cent. L. J., 144; *U. S. v. Nunnemacher*,

<sup>7</sup> *Bissell*, 123; *U. S. v. Goldberg*, Ib. 180; *Bloomer v. State*, 48 Md., 521; *People v. Powell*, 63 N. Y., 88.

<sup>10</sup> *Comm. v. Judd*, 2 Mass., 329; *State v. Buchanan*, 5 Har. v. John. (Md.), 317; *Hazen v. Comm.*, 11 Harris (Pa.), 355; *U. S. v. Cole*, 5 McLean, 513.

<sup>11</sup> *U. S. v. Goldberg*, *ut supra*.

the illegal action of others—an active participation is necessary.<sup>1</sup>

Answer to  
objections.

There is nothing in the objection that to punish a conspiracy where the end is not accomplished, would be to punish a mere unexecuted intention. It is not the bare intention that the law punishes, but the act of conspiring, which is made a substantive offence by the nature of the object intended to be effected. In this respect conspiracies are analogous to unlawful assemblies. It is not the bare unexecuted intention which the law punishes, but it is the act of meeting alone, though it should be to do what, if actually done by one, as the pulling down of enclosures, would be but a civil trespass: yet the parties are liable to fine and imprisonment. The great principle, running through all the cases, is that conspiracies are substantive punishable offences, though they be not executed, and the means, which may be criminal or indifferent, are no part of the crime itself, but are matters of evidence to prove the charge.<sup>2</sup>

Means need  
not be agreed  
upon to make  
a conspiracy  
complete.

Nor is it necessary to constitute a conspiracy that the means should be predetermined.<sup>3</sup> This is well illustrated by C. J. Willard, in *State v. Cardoza*.<sup>4</sup> "Suppose," said he, "a conspiracy had been formed to rob on the highway, but no person had been designated as the special subject of such robbery, and no definite place or means of overpowering the victims of the plot formed part of the agreement of conspiracy. Money and arms are collected to carry out the conspiracy. The band is divided, distributed, and posted; some for the purposes of direct attack, others to watch against surprise, and others to reinforce a weak party. No action has yet appeared to put in exercise the formidable combination of force and skill. At this stage of the operation the parties are arrested and charged with a conspiracy to rob. Must the charge fail, because the terms of the conspiracy did not embrace circumstances of time, place and person, as it regarded the accomplishment of its purpose? If so, then it would not be possible, even after the plan had been carried out, to punish the conspirators, for, in the first place, the crime

<sup>1</sup> *Evans v. People*, 90 Ill., 384; *Miles v. State*, 58 Ala., 390; *People v. Leith*, 52 Cal., 251; *Brannock v. Bouldin*, 4 Iredell (N. C.), 61; *U. S. v. Johnson*, 26, Fed. Rep., 682.

<sup>2</sup> *State v. Buchanan*, 5 Har. & John. (Md.), 317; *Isaacs v. State*, 48 Miss., 234; *People v. Geiger*, 49 Cal., 643; *People v. Tweed*, 5 Hun. (N. Y.), 353.

<sup>3</sup> *Lambert v. The People*, 9 Cowen (N. Y.), 578.

<sup>4</sup> *State v. Cardoza*, 11 S. C., 196.

was consummated, if at all, at the moment the agreement was made, and if conviction in any such case could not take place prior to the actual commission of the intended crime, it was because no crime had been committed nor could the character of the conspiracy in that respect undergo any change after it was consummated by an unlawful agreement. In the second place, the moment the right to punish the conspiracy arose, it would be destroyed by merger in the offence of the higher grade flowing from it. It would be a just reproach to the Common law, if it afforded no means of dissipating combinations threatening the destruction of legal security, however formidable they might be, because the objects were general and threatened the community indefinitely and were not aimed at some particular member of the community, or to some other limited and defined sphere."

The offence is necessarily joint. Two, at least, must be concerned in it; one cannot be convicted of it, unless he has been indicted for conspiracy with persons unknown.<sup>1</sup> In an indictment against two, the acquittal of one is the acquittal of the other.<sup>2</sup> But where three persons were engaged in a conspiracy, and one was acquitted, and the other died before trial, it was held that the third could nevertheless be tried and convicted.<sup>3</sup> A man and his wife, being in law but one person, cannot be convicted of conspiracy, unless other parties are charged; but where the defendant is charged with conspiracy with persons unknown, it is good, notwithstanding the names of the persons unknown must necessarily have transpired to the grand jury,<sup>4</sup> but they may be prosecuted for a conspiracy entered into before marriage.<sup>5</sup> Where an indictment charged a man and his wife with conspiracy, with a person unknown, to extort hush-money, it was held that A., though alleged by the prosecution to be the person unknown, covered by the indictment, was admissible as a witness for the defence, he not appearing to be a party upon the record.<sup>6</sup>

<sup>1</sup> *Turpin v. State*, 4 Blackf. (Ind.), 72. *State v. Allison*, 3 Yerger (Tenn.), 428. *People v. Howell*, 4 Johns (N. Y.), 296. *State v. Jackson*, 7 S. C., 283. *Comm. v. Manson*, 2 Ashm. (Pa.), 31. *Johnson v. State*, 3 Texas App., 590. *Comm. v. Irwin*, 8 Phila., 380. *State v. Adams*, 1 Houston's Rep., Cr. C. (Del), 361.

<sup>2</sup> *State v Tom*, 2 Dev. (N. C.), 569

<sup>3</sup> *People v. Olcott*, 2 John Cas. N. Y. 301.

<sup>4</sup> *People v. Mather*, 4 Wend. (N. Y.), 231. *State v. Covington*, 4 Ala., 603.

<sup>5</sup> *Rex. v. Robinson*, 1 Leach, 37. See 2 Bish. C. L. § 162. 1 Hawk, P. C., 448.

<sup>6</sup> *Comm. v. Wood*, 7 Law Reporter, 58.

Liability of conspirators for the acts and declarations of each other.

Where several conspire to do an unlawful act, all are liable for the act of each, if done in the prosecution of their common purpose,<sup>1</sup> but if the act committed has no connection with the common object, the party committing it is alone responsible for its consequences.<sup>2</sup> The least degree of concert or collusion between the parties to an illegal transaction makes the act of one the act of all.<sup>3</sup> If it be found that A. with others had conspired and combined to effect a common object, and it was arranged that each should do certain acts and perform certain parts, with a view to the attainment of the same common result, or that one or two were to be the active agents, while the others remained in the background, and took no open or visible part in the transactions, yet they would be all alike responsible for the acts of all and of either one. Whatever is said or done by either one of the number in furtherance of the common design becomes part of the *res gestæ*, and is the act or saying of all.<sup>4</sup> All concerned in the execution of the common purpose are equally guilty.<sup>5</sup> But the evidence of what was said and done by the other conspirators must be limited to their acts and declarations made and done while the conspiracy was pending, and in furtherance of the design; what was said or done by them before or afterwards not being within the principle of admissibility.<sup>6</sup> The defendant and his confederates, though not present at the commission of the crime, may yet be guilty as conspirators;<sup>7</sup> and in a conspiracy

<sup>1</sup> *State v. Wilson*, 30 Conn. 500. *Tompkins v. State*, 17 Ga., 356. *Heine v. Comm.* 10 Norris (Pa.), 148. *State v. Larkin*, 49 N. H., 39. *Cuyler v. McCartney*, 40 N. Y., 224. *Hardin v. State*, 4 Texas, App. 355. *State v. Nash*, 7 Iowa, 347. *Green v. State*, 13 Mo., 382. *People v. Saunders*, 25 Mich., 119. *State v. Arnold*, 48 Iowa, 566. U. S. v. Mitchell, 1 Hughes, 439.

<sup>2</sup> *Frank v. State*, 27 Ala., 37. *Heine v. Comm.*, 10 Norris (Pa.), 148. *People v. Leith*, 52 Cal., 251.

<sup>3</sup> *Phillips v. State*, 6 Texas App., 364. *Brown v. State*, 83 Ill., 291. U. S. v. Goldburg, 7 Biss., 175.

<sup>4</sup> *State v. Larkin*, 49 N. H., 39.

<sup>5</sup> U. S. v. Goldberg, 7 Biss., 175; U. S. v. Nunnemacher, 7 *Ibid.*, 111; *Comm. v. Harley*, 7 Metc. (Mass.), 462; *Reg. v. Fellows*, 19 Up. Can. Q. B., 48; *Reg. v. Slavin*, 17 Up. Can. C. P., 205; *Smith v. State*, 52 Ala., 407; *Jackson v. State*, 54 *Ib.*, 234; *State v. Jackson*, 29 La. An., 354; *Brown v. Smith*, 83 Ill., 291; *Collins v. Comm.*, 3 S. & R. (Pa.), 220; *People v. Woody*, 45 Cal., 289; *Comm. v. O'Brien*, 66 Mass., 84; *Glory v. State*, 13 Ark. 236; *Lawson v. State*, 32 Ark. 720; *Ohio v. Cook, Tappan*, (Ohio), 55.

<sup>6</sup> *Heine v. Comm.*, 10 Norris, (Pa.), 148; *Regina v. Murphy*, 8 C. & P., 297; *State v. Dean*, 13 Iredell, (N. C.), 63; *State v. George*, 7 Iredell, 329; *State v. Earwood*, 75 N. C., 210; *Regina v. Shellard*, 9 C. & P., 277.

<sup>7</sup> *Jones v. State*, 64 Ind., 473.

between two, who fired to commit a felony, it is immaterial who fired the first shot,<sup>1</sup> but where parties combine to commit an offence, the one who did not consent and was not privy to the fact is not responsible.<sup>2</sup>

A conspiracy is not destroyed by connection, at a coming into subsequent time, of new parties therewith, as a new conspiracy party, agreeing to the plans of the conspirators, and formed, are coming in and assisting them, becomes one of them.<sup>3</sup> New parties, liable.

The evidence in proof of a conspiracy is generally circumstantial.<sup>4</sup> Though the common design is the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed in terms to have that design, and to pursue it by common means. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another another part of the same so as to complete it, with a view to the attainment of that same object, the jury will be justified in the conclusion, that they were engaged in a conspiracy to effect that object.<sup>5</sup> Nor is it necessary to prove that the conspiracy originated with the defendants; or that they met during the process of its concoction; for every person, entering into a conspiracy or common design already formed, is deemed in law a party to all acts done by any of the other parties, before or afterwards, in furtherance of the common design.<sup>6</sup>

<sup>1</sup> People *v.* Woody, 45 Cal., 289.

<sup>2</sup> People *v.* Knapp, 26 Mich., 112; And see State *v.* Phillips, 24 Mo., 475; People *v.* Leith, 52 Cal., 251; Frank *v.* State, 27 Ala., 37.

<sup>3</sup> U. S. *v.* Nunnemacher, 7 Biss., 111; People *v.* Mather, 4 Wendell, (N. Y.), 29.

<sup>4</sup> State *v.* Sterling, 34 Iowa, 443; Comm. *v.* Gillespie, 7 S. & R.; Comm. *v.* McClean, 2 Parsons (Pa.), 367.

<sup>5</sup> Comm. *v.* Ridgway, 2 Ashm. (Pa.), 247; United States *v.* Cole, 5 McLean, 513; Regina *v.* Murphy 8 C. & P., 297.

<sup>6</sup> *Ibid.* Comm. *v.* Warren, 6 Mass., 74; People *v.* Mather, 4 Wendell, 259. Greenleaf on Evidence, 13 Edit. Vol. III. § 93. Collins *v.* Comm., 3 S. & R. (Pa.), 220.

## SECTION II.

## THE NATURE OF CONSPIRACIES BY STATUTE.

*A.—In the Courts of the United States.**B.—In the Courts of the States.**A. IN THE COURTS OF THE UNITED STATES.*

No Common law offences against the United States. It is well settled that the Common Law is not a source of jurisdiction in the Federal Courts. The District and Circuit Courts of the United States have no Common law jurisdiction of offences of any grade or description, and it is equally clear that the appellate jurisdiction of the Supreme Court does not extend to any case or any question in a case not within the jurisdiction of the subordinate Federal Courts. Or, as it is sometimes said, there are no Common Law offences against the United States.<sup>1</sup>

It follows, that an offence to become the subject of an indictment in the Courts of the United States must be an offence created and defined by an Act of Congress.

Must be defined by Acts of Congress. The sections of the Revised Statutes of the United States which relate to the subject of Conspiracy, will be found in Appendix I.

*Conspiracy under the Statutes of The United States as Interpreted by the Courts.*

It was held in the case of the United States *v. Martin*,<sup>2</sup> that Conspiracy as known at Common Law, not being defined by any act of Congress as an offence against

<sup>1</sup> State *v. Wheeling Bridge Co.*, 13 Howard, 563; U. S. *v. Hudson*, 7 Cranch, 32; Opinion of Mr. Justice Clifford in U. S. *v. Cruikshank*, 92, U. S. Rep. 564; U. S. *v. Bevans*, 3 Wheaton, 336; U. S. *v. Irwin*, 5 McLean, 178; Hubbard *v. North R. Co.*, 3 Blatch, 84.

<sup>2</sup> The United States *v. Martin*, 4 Clifford, 156, A. D. 1870.

the authority of the United States, is not cognizable as such in the Federal Courts. Therefore, it becomes important to consider how far the Common Law offence has been modified by the Revised Statutes of the United States. Section 5440 contains the most general and comprehensive description of the crime, and under it most of the cases have arisen in which the question has been considered.

A conspiracy is a breathing together. It means that there was a common purpose, supported by concerted action. That each conspirator had the intent to do it, and that each understood the others as having that purpose.<sup>1</sup>

In *The United States v. Sacia*,<sup>2</sup> Judge Nixon of the District of New Jersey, after quoting the language of the Statutes, says: "The offence, you perceive, consists in two or more persons conspiring to defraud the government in any manner whatever, in a case where one or more parties to the conspiracy shall do any act to effect the object; that is to effect the fraud. It need not be successful. It may fall short of the actual commission of the fraud. Merely agreeing or combining together to commit the fraud is sufficient to constitute the offence, without any loss to the government, if any one of the parties has taken a step towards its execution. Must be an agreement and an act to effect it.

The section is very sweeping in its term, and was doubtless intended to meet the party to the fraud against the government on the very threshhold of the perpetration of his crime, and to render him liable to its penalties before the consummation of the fraud." \* \* \* \*

"The statutory offence, under the laws of the United States, is not complete, however, until an act is done by some of the parties to carry into execution the fraud. The agreement or combination is the offence, but the performance of the alleged act to effectuate it is necessary to make it indictable in this court."

In *United States v. Watson*,<sup>3</sup> it was held that to constitute a criminal offence, under Section 5440, something must be done by one or more of the conspirators to effect the object of the conspiracy. The object of the conspiracy or the thing to be done must be to commit some offence against the United States; that is, to do some act made a crime by the laws of the United

<sup>1</sup> *United States v. Frisbie*, 28 Fed. Rep., 808, A. D. 1886.

<sup>2</sup> *The United States v. Sacia*, 2d. Fed. Reporter, 754, A. D. 1880.

<sup>3</sup> *The United States v. Watson*, 17 Fed. Rep., 145, A. D. 1883. To the same effect is *In re Wolf*, 27 Fed. Rep., 606, A. D. 1886.

Section 5440 States, or to defraud the United States. But while not restricted to offences which injure the United States.

Section 5440 makes any conspiracy to commit an act, declared by any law of the United States to be a crime, an offence against the United States, it does not restrict it to such acts as injure the United States. It applies as well to all conspiracies that affect private rights or interests, where they are under the protection of the criminal laws of the United States, as to the rights and interests of the government itself. Hence, it was held that a conspiracy to plunder a wrecked vessel within the admiralty and maritime jurisdiction of the United States is an offence against the United States, within the meaning of that Section, that act being a crime within Revised Statutes, Section 5358.<sup>1</sup>

Acts need not appear calculated to effect the object of the conspiracy.

It is not necessary, however, that it should appear that the act averred to be done to carry out the conspiracy would tend to effect the object or not, that being a matter of proof and a question for the jury.<sup>2</sup> Or, as was said in *United States v. Donau*,<sup>3</sup> "the act which the statute calls for is not designated as an overt act, and was not intended to be made an element proper of the offence. The offence is the conspiracy. Some act by some of the conspirators is required to show, not the unlawful agreement, but that the unlawful agreement, while subsisting, became operative." To state the purpose of the act in other words: "The acts set out are no part of the offence and may in themselves be innocent. The purpose of the law is that a mere agreement, however corrupt, shall not be punished as a crime, unless it has led to some overt act; and any form of language which shows that such an act has been done to carry out the agreement is sufficient."<sup>4</sup>

Act need not be criminal.

Nor is it necessary that the act done in pursuance of the conspiracy should be criminal. In none of the cases just quoted were the overt acts criminal acts. In *United States v. Gordon*,<sup>5</sup> it was said by Judge Nelson: "The section of the statute (5440) makes it a crime to conspire to defraud the United States in any manner, and the cases cited from the State courts which hold that a conspiracy to defraud is not criminal, unless it is a conspiracy to defraud in a manner made criminal by statute, have no application to indictments under section 5440. It is immaterial what means were used to

<sup>1</sup> *United States v. Sanche*, 7 Fed. Rep., 715 A. D. 1881.

<sup>2</sup> *Ibid.*

<sup>3</sup> *United States v. Donau*, 11 Blatchf., 168, A. D. 1873.

<sup>4</sup> *United States v. Boyden*, 1 Lowell, 266, A. D.

<sup>5</sup> *United States v. Gordon*, 22 Fed. Rep., 250, A. D. 1884.

defraud, as it is criminal to conspire to defraud the United States in any manner or for any purpose, and the court does not care to know whether the mode adopted to accomplish the end proposed is made criminal or not."

The nature of the act required by the statute is well illustrated by Judge Dyer in the *United States v. Goldberg*.<sup>1</sup> He says: "The act must be one, you will observe, to effect the object of the conspiracy. That must be the character of the act. It must not be an act which is part of the conspiracy, it must not be one of a series of acts constituting the agreement on conspiring together, but it must be a subsequent independent act, following a completed conspiracy, and done to carry into effect the object of the original combination. To illustrate, two persons conspire to take the life of another. It is agreed that it shall be done. The conspiracy is complete, but there is yet wanting the act to effect the object of the conspiracy. One of the parties purchases or procures the weapon with which to do the deed; there you have an act to effect the object, and the punishable offence is fully committed. So if the parties subsequent to the formation of a complete conspiracy, following it up and as independent acts, hold consultations between themselves and others as to the means to be employed to carry the conspiracy into effect, or go from place to place and confer about and arrange as to the particular means or instrumentalities that shall be used or employed to effect the object of the conspiracy, these constitute acts to effect such object."

The most complete and at the same time most authoritative description, because adopted by the Supreme Court of the United States, is given by Judge Benedict in the *United States v. Donau*.<sup>2</sup>

"The 30th section of the act of March 2d, 1867,<sup>3</sup> creates an offence which may be committed without any other action on the part of the accused, than that of conspiring with another to commit an offence against the laws of the United States. The unlawful agreement is, therefore, the gist of the offence which this section intended to create. The requirement that some

<sup>1</sup> *The United States v. Goldberg*, 7 Bissell, p. 183, A. D. 1876. See also *United States v. Nunnemacher*, 7 Bissell, 111.

<sup>2</sup> *The United States v. Donau*, 11 Blatchford, 168, A. D. 1873. Approved in *United States v. Britton*, 108 U. S. Rep., 199, A. D. 1882.

<sup>3</sup> Now merged in Section 5440 of Revised Statutes.

Definition  
adopted by  
S. C. of U. S.

act to effect the object of the conspiracy be done by some one of the conspirators, is intended to afford a *locus penitentiae*. Until some act be done by some one of the conspirators to effect the object of the unlawful agreement all parties to the agreement may withdraw, and thus escape the effect of the statute. After such an act, all are liable to the penalty. The act to effect the object of the conspiracy, which the statute calls for, is not designated as an overt act, and was not intended to be made an element proper of the offence. The offence is the conspiracy. Some act by some one of the conspirators is required, to show not the unlawful agreement, but that the unlawful agreement, while subsisting, became operative. The offence of conspiracy is committed when, to the intention to conspire, is added the actual agreement; and this intent to conspire, coupled with the act of conspiring, completes the offence intended to be created by the statute, notwithstanding the requirement that the prosecution show, by some act of some one of the conspirators, that the agreement went into actual operation.

If, then, an indictment correctly charges an unlawful combination and agreement as actually made, and, in addition, describes any act by any one of the parties to the unlawful agreement, as an act intended to be relied on to show the agreement in operation, it is sufficient, although, upon the face of the indictment it does not appear in what manner the act described would tend to effect the object of the conspiracy. It is sufficient if the act be so described as to apprise the defendant what act is intended to be given in evidence as tending to show that the unlawful agreement was put in operation, without its being made to appear to the court, upon the face of the indictment, that the act mentioned is necessarily calculated to effect the object of the unlawful combination charged. It is not the case of an attempt to commit crime. The crime is committed when the combination is made, and the act of one of the conspirators is not required by the statute to show the intent. That is inferred from the unlawful act of combining to defraud, or to commit an offence; but the object of requiring proof of some act in furtherance of the unlawful agreement is, to show that the unlawful combination became a living, active combination."

The language of the Circuit Courts is nearly uniform. Thus in United States v. Nunnemacher,<sup>1</sup> Judge

<sup>1</sup> United States v. Nunnemacher, 7 Bissell, 111.

Dyer said "a mere agreement or combination to effect an unlawful purpose, not followed by any act done by either of the parties to carry into execution the conspiracy does not constitute the offence. There must be both the corrupt agreement or combination and an act done by one or more of the parties to effect the illegal object or design agreed upon to make the punishable offence under the statute." Must be a corrupt agreement and an act done.

The decisions of the Supreme Court of the United States are but few. In *United States v. Hirsch*,<sup>1</sup> Mr. Justice Miller said "although by the statute something more than the Common Law definition of a conspiracy is necessary to complete the offence, to-wit, some act done to effect the object of the conspiracy, it remains true that the combination of minds in an unlawful purpose is the foundation of the offence." In *United States v. Britton*,<sup>2</sup> Mr. Justice Woods says:

Doctrine of  
the Supreme  
Court of the  
United States

"This offence does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute, that there must be an act done to effect the object of the conspiracy, merely affords a *locus penitentiae*, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalties of the statute. It follows as a rule of criminal pleading that in an indictment for Conspiracy under section 5440, the conspiracy must be sufficiently charged, and that it cannot be aided by the averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy."

In other respects Conspiracies under the Statutes of the United States do not differ materially from those at Common Law, or under the Statutes of the States. They are governed by the same rules relating to evidence and the requisites of indictments.<sup>3</sup>

<sup>1</sup> *United States v. Hirsch*, 100 U. S. Rep., 33, 1879.

<sup>2</sup> *United States v. Britton*, 108 U. S. Rep., 199, 1882.

<sup>3</sup> See Chapter on Evidence, post, p. 212; and Chapter on Indictments, p. 186. Also, *As to Evidence*, *United States v. Graff*, 14 Blatchford, 380, A. D. 1878; *United States v. McDonald*, 8 Bisell, 439, A. D. 1879; *United States v. Goldberg*, 7 Ibid., 175 A. D. 1876; *Mussel Slough Case*, 5 Fed. Rep., 680. *As to Indictments*, *United States v. Butler*, 1 Hughes, 458, A. D. 1877; *United States v. Boyden*, 1 Lowell, 266; *United States v. Walsh*, 5 Dillon, 58, 1878; *United States v. De Grieff*, 16 Blatchford, 20, A. D. 1879.

B. THE NATURE OF CONSPIRACIES BY STATUTE IN THE COURTS  
OF THE STATES.

Statutes relating to Conspiracy exist in Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia and Wisconsin.

They will be found in Appendix II.

None exist in California, Colorado, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, Ohio, Oregon, Rhode Island and West Virginia.

In Connecticut, the Statute of 1878, which had its origin in the wide-spread railroad labor trouble of 1877, provides that: "Every person who shall threaten, or use any means to intimidate any person, to compel such person, against his will, to do or abstain from doing, any act which such person has a legal right to do," shall be punished as therein stated. Although not applicable to conspiracies in terms, it has been extended to a conspiracy to boycott a newspaper.<sup>1</sup>

General ob-  
servations  
upon the  
statutes of  
the States.

It is deemed to be unnecessary to dwell upon the special features of each statute, as this would involve much repetition of matter to be found in Appendix II. It will be observed that in some, as in New York, a definition of the offence is attempted. In others, as in Alabama and Delaware, no definition is given and recourse must be had to the Common Law. In some, as in Florida, the statute is a concise epitome of the Common Law, in others it is simply declaratory, as in Pennsylvania and Kentucky, and covers but a part of the field. In New York, no conspiracies are punishable except those expressly enumerated. In New Jersey the contrary has been held. In some, as in Arkansas as to all conspiracies, and in Alabama and Wisconsin as to those to commit misdemeanors only, an act to carry the conspiracy into effect is required to complete the offence; in others, as in Georgia, the contrary is stated. In some, as in Indiana, reference is made only to conspiracies to commit felonies, while silence is maintained as to conspiracies to commit misdemeanors. In some, the statute is concurrent with the Common Law, as in Pennsylvania and New Jersey, while in others, as in Indiana, Iowa and Ohio, it is held that all crimes must

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<sup>1</sup> State v. Glidden, 3 N. Eng. Rep., 849, A. D. 1887.  
(4818)

NATURE OF THE CRIME BY STATUTE.

be of statutory origin.<sup>1</sup> In Minnesota it is said the conspiracy to tar and feather a man, though not declared to be criminal by statute, is indictable as a Common Law offence. Some statutes are the result of careful study and codification as in Florida, Tennessee and Texas, while others are evidently due to some local disturbance, such as the railroad troubles in Michigan and the political condition once existing in North Carolina, South Carolina and Virginia. Statutes relating Labor Unions and Conspiracies among Workmen, either in express terms, or by implication, are to be found only in Connecticut, New York and Pennsylvania.

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<sup>1</sup> See *Key v. Vattier*, 1 Ohio, 132; *Hackney v. State*, 8 Indi 494; *Beal v. State*, 15 Ind. 378; *State v. Ohio & Miss. R. R* Ind. 362; *Estes v. Carter*, 10 Iowa, 400. See, also, 30 Kar 122.

## CHAPTER III.

### CONSPIRACIES HELD TO BE INDICTABLE.

In this chapter it is our purpose to classify all of the decisions which have held Conspiracies to be indictable, with such remarks as appear to be appropriate.

#### Felonies.

##### Chief features.

Such Conspiracies are undoubtedly indictable. They are agreements to violate the law. The end is criminal.<sup>1</sup> It is not necessary to set forth the *means* in the indictment, but it is sufficient to describe in apt terms the Common law, or statutory offence, aimed at.<sup>2</sup> Nor is it necessary to set forth overt acts; if stated, they are but an aggravation of the offence.<sup>3</sup> The crime is complete, when the conspiracy is entered into, even if it be unexecuted.<sup>4</sup> The conspiracy is the gist of the offence.<sup>5</sup> If the conspiracy be unexecuted there is no merger.<sup>6</sup> If it be executed, it has been held in Maine, Massachusetts, New York, Michigan, Pennsylvania, and one or two of the other States that the offence merges in the felony.<sup>7</sup> The effect is to render the indictment incapable of supporting a conviction of conspiracy, which is everywhere rated as a misdemeanor.<sup>8</sup>

For matters touching indictments, merger, judgment and sentence, reference must be made to succeeding chapters.

The following cases belong to Conspiracies to commit Felonies:

##### Murder.

###### Conspiracies to commit murder.<sup>9</sup>

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<sup>1</sup> State *v.* Chapin, 17 Ark., 561; State *v.* George, 7 Iredell (N.C.), 321; State *v.* Sterling, 34 Iowa, 443; Landringham *v.* State, 49 Ind., 186; Brown *v.* State, 2 Texas Ct. App., 115.

<sup>2</sup> Post, pp. 186, *et seq.* Chapter on Indictments.

<sup>3</sup> Comm. *v.* Hunt, 4 Met. (Mass.), 111.

<sup>4</sup> Hazen *v.* Comm., 11 Harris (Pa.), 362.

<sup>5</sup> Comm. *v.* Gillespie, 7 S. & R. (Pa.), 220.

<sup>6</sup> Post, pp. 222, Chapter on Merger.

<sup>7</sup> Ibid.

<sup>8</sup> People *v.* Mather, 4 Wendell, 265; Comm. *v.* Kingsbury, 5 Mass. 106; Comm. *v.* Parr, 5 W. & S. (Pa.), 345.

<sup>9</sup> Frank *v.* State, 27 Ala., 37; Doghead Glory *v.* State, 13 Ark., 236; People *v.* Woody, 45 Cal., 289; People *v.* Geiger, 49 Cal., 643; People *v.* Leith, 52 Cal., 251; State *v.* Allen, 47 Conn., 121; Brennan *v.* People, 15 Ill., 511; Lamb *v.* People, 96 Ill., 73; Williams *v.* State, 47 Ind., 568; Jones *v.* State, 64 Ind., 475; Walton *v.*

Conspiracies to commit rape. <sup>1</sup>	Rape.
Conspiracies to commit burglary. <sup>2</sup>	Burglary.
Conspiracies to commit arson. <sup>3</sup>	Arson.
Conspiracies to commit larceny. <sup>4</sup>	Larceny.
Conspiracies to commit robbery. <sup>5</sup>	Robbery.
Conspiracies to commit treason. <sup>6</sup>	Treason.
Conspiracies to commit statutory felonies. <sup>7</sup>	Statutory felonies.
Conspiracies to steal. <sup>8</sup>	To steal.
Conspiracies to procure abortion. <sup>9</sup>	Abortion.

## B.—CONSPIRACIES TO COMMIT MISDEMEANORS.

Much of what has been said in relation to conspiracies to commit felonies is applicable to this class of cases. The end being criminal it is not necessary to set forth the means in the indictment. The chief feature of difference is that, conspiracy being a misdemeanor, the offence when executed does not merge.<sup>10</sup> The crime consists in the agreement to violate the law, and it is not necessary to carry the intention of the conspirators into execution, before they become liable to indictment. Acts done in pursuance of the combination are but an aggravation of the offence. The conspiracy is the crime, the overt act may be a very insignificant affair. Where the end is lawful, but the means resorted to result in the commission of crimes which

State, 88 Ind., 9; *Archer v. State*, 106 Ind., 426; *State v. Nash*, 7 Iowa, 347; *State v. Winner*, 17 Kansas, 305; *Cummins v. Comm.*, 81 Ky., 465; *Comm. v. Crowninshield*, 10 Pick., (Mass.), 497; *Carington v. People*, 6 Parker's C. R., (N. Y.), 336; *State v. Tom*, 2 Dev. (N. C.), 569; *State v. George*, 7 Ired. (N. C.), 321; *Rufer v. State*, 25 Ohio St. 465; *State v. Ford*, 37 La. Ann., 443.

<sup>1</sup> *State v. Shields*, 45 Conn., 256; *State v. Trice*, 88 N. C., 628.

<sup>2</sup> *Scudder v. State*, 62 Ind., 13; *Smith v. State*, 93 Ind., 67; *State v. Ridley*, 48 Iowa, 370; *Brown v. State*, 2 Texas Ct. App., 115; *Mason v. State*, Ibid., 192.

<sup>3</sup> *State v. Chapin*, 17 Ark., 561.

<sup>4</sup> *Lawson v. State*, 32 Ark., 220; *State v. Grady*, 34 Conn., 118; *State v. State*, 60 Ind., 308; *Miller v. Comm.*, 78 Ky., 15.

<sup>5</sup> *People v. Pool*, 27 Cal., 572; *People v. Richards*, 67 Cal., 412; *State v. Sterling*, 34 Iowa, 443; *Landringham v. State*, 49 Ind., 186; *Lisle v. Comm.*, 82 Ky., 250; *State v. Heywood*, 2 Nott & McC., (S. C.), 312.

<sup>6</sup> *Comm. v. Blackburn*, 1 Duval, (Ky.), 4.

<sup>7</sup> *State v. McKinstry*, 50 Ind., 465; *State v. Murray*, 15 Maine, 100; *Comm. v. O'Brien*, 12 Cush. (Mass.), 84.

<sup>8</sup> *Clinton v. Estes*, 20 Ark., 216; *State v. Wilson*, 30 Conn., 500; *Reid v. State*, 20 Ga., 681; *State v. Dean*, 13 Ired. (N. C.), 63; *State v. Sterling*, 34 Iowa, 443.

<sup>9</sup> *Solander v. People*, 2 Colorado, 48; *Comm. v. Demain*, Brightly's Rep. (Pa.), 441.

<sup>10</sup> *State v. Murray*, 15 Maine, 100; *Comm. v. O'Brien*, 12 Cush., 84.

amount to misdemeanors *per se*, or by statute, there, though there is not in truth a combination or agreement to commit a crime, yet the fact that the attempt to reach the object of the conspiracy has involved the participants in crime is sufficient to put them upon the footing of those who had distinctly agreed to violate the law, and the consequences are the same. The only point to be observed is that in some States it is held that the means resorted to must be distinctly stated in the indictment so that the criminality charged may appear plainly upon the record.

The largest, and, perhaps, the most important class of cases—in which the discussion upon the form of an indictment has been most frequent—is that of conspiracies under the following head:

To cheat and defraud.

#### C.—CONSPIRACIES TO CHEAT AND DEFRAUD.

First class.

The cases are divisible into the two classes of indictable frauds, and those not indictable. There can be no doubt that if the fraud contemplated by the conspirators is such a fraud as to be *per se* indictable—that is, if actually perpetrated by one alone he would be answerable criminally—a combination or agreement to commit such a fraud is also criminal.<sup>1</sup>

Second class.

As to the second class—conspiracies to commit frauds not indictable *per se*,—there can be little doubt that though an individual might commit the act without criminal responsibility—there being many cheats and frauds not amounting to crimes—yet a combination to commit the fraud will subject the parties to indictment for a criminal conspiracy.<sup>2</sup> The only case in which this doctrine is distinctly controverted is that of *State v. Rickey*,<sup>3</sup> and the opinion of Judge Ford, is both learned and able, but this authority was distinctly overruled in the later case of *State v. Norton*,<sup>4</sup> and it is opposed to the current of authority.<sup>5</sup> It is true that the discussion which has taken place upon the form of the indictment in cases of this class might lead the mind to a contrary conclusion, and in Massachusetts, Maine, Michigan and Iowa, great stress is laid upon the means to be em-

<sup>1</sup> *The State v. Norton*, 3 Zab. (N. J.), 33; *The State v. Buchanan*, 5 Har. & J. (Md.), 317; *Clary v. Comm.*, 4 Barr (Pa.), 210; *Collins v. Comm.*, 3 S. & R., 220.

<sup>2</sup> *State v. Cole*, 10 Vroom, 334.

<sup>3</sup> *State v. Rickey*, 4 Halsted, 293.

<sup>4</sup> *State v. Norton*, 3 Zab., 33.

<sup>5</sup> See ante pp. 115—119, et seq.

ployed,<sup>1</sup> which, it is said, must be set forth in the indictment, but apart from the discussion as to the form of allegation, it does not appear to be anywhere distinctly ruled that such a combination is not criminal. It is certain that such a doubt could only arise in States where it is held that to constitute the crime of conspiracy, either the end or the means must be criminal. Where this narrow view does not prevail, no doubt can arise, for though cheating or defrauding by one is not always criminal, it is always unlawful, and a conspiracy, the Nature as the great weight of authority proves, is an agreement to do an unlawful (not necessarily criminal) act by lawful means, or a lawful act by unlawful (not necessarily criminal) means.<sup>2</sup> In *State v. Rowley*,<sup>3</sup> it is said: "Many acts, which, if done by an individual, and not indictable, are punishable criminally, when done in pursuance of a conspiracy among numbers." In the case of *Comm. v. Rhoads*,<sup>4</sup> C. J. Gibson used the following language: "No judge ever doubted that a conspiracy to cheat is as clearly criminal as a conspiracy to steal, and though there is perhaps no case exactly in point, we do not hesitate to pronounce it so." He qualifies this, however, by adding: "The nature of the offence for which the prisoner was held to bail, shows it to have been indictable."

One of the best illustrations of the extent to which the law has been carried upon this point is to be found in *State v. Cole*,<sup>5</sup> which was the case of a combination between one member of a partnership, and a third person, to issue and put in circulation the notes of the firm, drawn by such partner for the purpose of paying his individual debts, C. J. Beasley said: "Inasmuch as a partner has the right to create and put off notes of the firm, it was contended that the diversion of such notes to an unauthorized purpose, was but a civil injury,

<sup>1</sup> See *Comm. v. Eastman*, 1 *Cush.*, 189; *Comm. v. Shedd*, 7 *Cush.* 514; *Comm. v. Wallace*, 16 *Gray*, 221; *State v. Hewett*, 31 *Maine*, 396; *State v. Ripley*, *Ibid.*, 386; *State v. Roberts*, 54 *Maine*, 320; *State v. Mayberry*, 48 *Maine*, 218; *Alderman v. People*, 4 *Mich.*, 414; *People v. Clark*, 10 *Mich.*, 310; *State v. Jones*, 13 *Iowa*, 269; *State v. Potter*, 28 *Iowa*, 554; *State v. Stephens*, 30 *Iowa*, 392; see also, *People v. Brady*, 56 *N. Y.*, 182.

<sup>2</sup> See ante, pp. 115, 119, et seq., and post p. 189, et seq.

<sup>3</sup> *State v. Rowley*, 12 *Conn.*, 101.

<sup>4</sup> *Rhoads v. Comm.*, 3 *Harris* (*Pa.*), 272.

<sup>5</sup> *State v. Cole*, 10 *Vroom* (*N. J.*), 324. See also *Queen v. Warburton*, L. R., 1 *Crown Cases Reserved*, 274, in which Lord C. J. Cockburn, holds that it is not necessary that the object of the conspiracy be criminal. It is sufficient if it be a civil wrong, effected by fraud and false pretences.

and not a breach of the public law. But this is a fallacious view. The query is not whether it is an indictable offence for a member of a firm to direct a partnership note to alien uses, but whether it is not such crime for him to do such act by concert with a third person, the intention of the two being fraudulent, and the act being carried into effect by deceitful devices. It is these added characteristics of the affair which in my view heighten the malfeasance into a punishable crime."

The result of the cases is well stated by Mr. Bishop, when he says : "Conspiracies to cheat, though unexecuted, are indictable, even where the unassociated attempt of the several conspirators would not be so, though successfully executed, because the combination itself to defraud, without any concert respecting the means, implies a union of corrupt power adapted alone to accomplish the object."<sup>1</sup> But some of the courts have refused to sustain such indictments where it did not appear that the means were such as would be indictable, because no cheating at Common law existed, unless by false tokens, false weights, dice or the like.<sup>2</sup>

The cases fall into one or the other of these classes.

The following are illustrations of conspiracies to cheat and defraud.

Illustrations  
of conspira-  
cies to cheat  
and defraud.

To cheat and defraud an insurance company by committing arson.<sup>3</sup>

To cheat and defraud an insurance company by unlawful possession of the office and property of the company.<sup>4</sup>

To cheat and defraud an insurance company by issuing fraudulent policies to persons for the purpose of enabling the holders to vote for certain persons as directors, and thereby get employment for the conspirators in the company's service.<sup>5</sup>

To cheat and defraud a bank by false entries and drawing checks.<sup>6</sup>

To cheat and defraud a bank by embezzlement, false accounts and vouchers.<sup>7</sup>

To cheat and defraud a bank by drawing checks when drawer had no funds.<sup>8</sup>

<sup>1</sup> Bishop's Cr. Law. 7th Edit. Vol. II, § 182.

<sup>2</sup> *Ibid.* § 185. See *Comm. v. Shedd, et id omne genus.* Ante, pp. 112—115.

<sup>3</sup> *People v. Trim,* 39 Cal. 75.

<sup>4</sup> *Noyes v. State,* 12 Vroom (N. J.), 418.

<sup>5</sup> *State v. Burnham,* 15 N. H., 396.

<sup>6</sup> *Comm. v. Foering,* Brightly's Rep. (Pa.), 315.

<sup>7</sup> *State v. Buchanan,* 5 Har. & Johns. (Md.), 317.

<sup>8</sup> *State v. Rickey,* 4 Halsted (N. J.), 293.

To cheat and defraud a bank by erasure of endorsement on note.<sup>1</sup>

To cheat and defraud a municipality.<sup>2</sup>

To cheat and defraud the State by false legislative pay certificates.<sup>3</sup>

To cheat and defraud a partner by agreeing with a third person to issue and circulate notes of the firm for the purpose of paying individual debts.<sup>4</sup>

To cheat and defraud creditors by withholding money.<sup>5</sup>

To cheat and defraud by offering to sell forged foreign bank notes.<sup>6</sup>

To cheat and defraud by uttering counterfeit bank bills.<sup>7</sup>

To cheat and defraud an individual with a view to extorti on by charging him falsely with crime.<sup>8</sup>

To cheat and defraud an individual by means of a forged deed.<sup>9</sup>

To cheat and defraud devisees by destruction of a will.<sup>10</sup>

To cheat and defraud by making drunk and cheating by false play at cards.<sup>11</sup>

To cheat and defraud citizens out of land entries.<sup>12</sup>

To cheat and defraud citizens out of lands and goods.<sup>13</sup>

To cheat and defraud an individual out of valuable papers by false and fraudulent representations.<sup>14</sup>

To cheat and defraud an individual by inducing him to become surety for an insolvent.<sup>15</sup>

To cheat and defraud incorporated companies out of goods and chattels.<sup>16</sup>

To cheat and defraud by false token.<sup>17</sup>

<sup>1</sup> State v. Norton, 3 Zab. (N. J.), 33.

<sup>2</sup> State v. Young, 8 Vroom, (N. J.), 184.

<sup>3</sup> State v. Cardoza, 11 S. C., 196.

<sup>4</sup> State v. Cole, 10 Vroom, 324.

<sup>5</sup> State v. Simons, 4 Strohbar (S. C.), 266.

<sup>6</sup> Twitchell v. Comm., 9 Barr (Pa.), 211; Clary v. Comm., 4 Barr (Pa.), 210.

<sup>7</sup> State v. Spalding, 19 Conn., 234.

<sup>8</sup> Comm. v. O'Brien, 12 Cush. (Mass.), 84.

<sup>9</sup> State v. Bradley, 48 Conn., 536.

<sup>10</sup> State v. DeWitt, 2 Hill (S. C.), 282.

<sup>11</sup> State v. Younger, 1 Dev. (N. C.), 357.

<sup>12</sup> State v. Trammell, 2 Ired., 379.

<sup>13</sup> People v. Richards, 1 Mich., 216.

<sup>14</sup> State v. Mayberry, 48 Maine, 218.

<sup>15</sup> Brannock v. Bouldin, 4 Iredell, 61.

<sup>16</sup> Lambert v. People, 7 Cowen (N. Y.), 166. *Ibid.* 9 Cowen, 578.

<sup>17</sup> Williams v. Comm., 34 Pa. St., 178.

To cheat and defraud individuals out of money, goods and chattels by false pretences.<sup>1</sup>

To cheat and defraud by divers false pretences and subtle means and devices.<sup>2</sup>

#### D. CONSPIRACIES RELATING TO THE RATES OF WAGES.

##### *Strikes and Boycotts.*

Strikes and  
Boycotts.

Statutes.

A small, though important and interesting, class of cases is that of conspiracies relating to the rates of wages, whether among employers or employés, it being just as criminal for the former to combine to depress wages, or to blacklist and proscribe a workman, as it is for the latter to conspire to advance their wages by lock-outs and strikes. The only statutes, relating in express terms to the subject, exist in New York and Pennsylvania. They are animated by a milder spirit than that which controlled English legislation until the act of 38 and 39 Victoria, ch. 86, passed in 1875, which specifically protected all combinations in contemplation or furtherance of trade disputes, and, with respect to such questions, at least, providing positively that no agreement shall be treated as an indictable conspiracy unless the act agreed upon would be criminal if done by a single person.<sup>3</sup> The statute in Connecticut, though aimed at the suppression of labor troubles, does not apply in terms to conspiracies, but it has been extended by a recent decision of the Supreme Court to the case of boycotting a newspaper.<sup>4</sup> The Michigan statute passed to reach combined offences against business, has been interpreted only in a case which arose out of an

<sup>1</sup> Isaacs *v.* The State, 48 Miss., 234; Comm. *v.* Wallace, 16 Gray, 221; Comm. *v.* Ward, 1 Mass., 473; Comm. *v.* Shedd, 7 Cauh, 514; Comm. *v.* Eastman, 1 Cush, 189; Comm. *v.* Warren, 6 Mass., 74; Comm. *v.* Hurly, 48 Mass., 462; Johnson *v.* People, 22 Ill., 314; Evans *v.* People, 90 Ill., 315; Comm. *v.* McKisson, 8 S. & R., 420; Rhoads *v.* Comm., 3 Harris (Pa.), 272; Henwood *v.* Comm., 52 Pa. St., 424; State *v.* Rowley, 12 Conn., 101; Alderman *v.* People, 4 Mich., 414; People *v.* Clark, 10 Mich., 310; Miller *v.* State, 79 Ind., 198; State *v.* Jones, 13 Iowa, 269; State *v.* Hewett, 31 Maine, 396; State *v.* Rogers, 34 Maine, 322; State *v.* Parker, 43 N. H., 83; State *v.* Jackson, 7 S. C., 283; State *v.* Crowley, 41 Wis., 271.

<sup>2</sup> State *v.* Keach, 40 Vt., 113.

<sup>3</sup> See an interesting article, reviewing the English decisions, reprinted from the Times in the Railway and Corporation Law Journal, Vol. 1, p. 314. The Law Times, March, 1887.

<sup>4</sup> State *v.* Glidden, 3 New Eng. Reporter, 849, A. D. 1887.

attempt by a railroad company to relay a bridge over a water-power canal.<sup>1</sup>

Before considering the changes wrought in the Common Law by legislative action, it will be proper to trace the course of the decisions to be found in the American books, although it is to be regretted that most of them never reached a court of last resort. This can be done most satisfactorily by adhering to a chronological arrangement.

The earliest reported case is that of the Boot and Shoemakers of Philadelphia,<sup>2</sup> in the Mayor's court, Early Cases.

presided over by Recorder Levy, a lawyer of distinguished reputation. The indictment contained three counts. The first charged that the defendants, being workmen and journeymen cordwainers, and not being content to work at the usual rates, conspired to increase the rates usually paid to them and to other workmen in the same art by refusing to work at current rates, and by demanding for their future labor an advanced rate according to a specified scale of work and wages. The second count charged that they had agreed to prevent other workmen in the same art by threats, menaces, and other unlawful means from working except at certain rates which they then and there fixed and insisted should be paid. The third count charged that they had conspired to form and did form a club and combination, and made unlawful and arbitrary rules, by-laws and orders, for the government of themselves and others, and agreed not to work for any master who should employ any workman or journeyman cordwainer, or other person who should thereafter infringe or break any of their rules, and that they would by threats, menaces, and other injuries prevent any other workmen or journeymen from working for such master. The indictment then set forth overt acts, and concluded to the damage of the masters, of the citizens of the Commonwealth generally, and to the great damage and prejudice of other artificers and journeymen in the art of a cordwainer, to the evil example of others, and against the peace and dignity of the Commonwealth.

Trial of Boot  
and Shoe-  
makers of  
Phila. //

The Attorney General asserted that the prosecution had been commenced, not from any private pique, or personal resentment, but solely, with a view to promote the common good of the community, and to prevent in future the pernicious combinations of misguided men,

<sup>1</sup> People v. Petheram, 7 Western Reporter, 592.

<sup>2</sup> The Trial of the Boot and Shoemakers of Philadelphia, Phila 1806. A very scarce pamphlet.

Trial of Boot to effect purposes not only injurious to themselves, but  
and Shoe-makers of  
Phila. to society.

The facts are sufficiently recited in the charge of the Recorder, from which, as it is the first case of the kind ever tried in America, and difficult to be obtained; we give copious extracts.

Charge of  
Recorder.

"It is of no importance whether the journeymen or the masters be the prosecutors. What would it be to you if the thing was turned round, and the masters were the defendants instead of the journeymen?" \* \* \* "No matter what their motives were, whether to resist the supposed oppression of their masters, or to insist upon extravagant compensation; no matter whether this prosecution originated from motives of public good or private interest, the question is whether the defendants are guilty of the offences charged against them?" \* \* \* "It is proper to consider, is such a combination consistent with the principles of our law, and injurious to the public welfare?" \* \* \* "The usual means by which the prices of work are regulated, are the demand for the article and the excellence of its fabric. Where the work is well done, and the demand is considerable, the prices will necessarily be high. Where the work is ill done, and the command is inconsiderable, they will unquestionably be low. If there are many to consume, and few to work, the price of the article will be high; but if there are few to consume, and many to work, the article must be low. \* \* \* These are the means by which prices are regulated in the natural course of things. To make an artificial regulation, is not to regard the excellence of the work or the quality of the material, but to fix a positive and arbitrary price, governed by no standard, controlled by no impartial person, but dependent on the will of the few who are interested; this is the unnatural way of raising the price of goods or work. \* \* \* Is the rule of law bottomed upon such principles, as to permit or protect such conduct?

Consider it on the footing of the general commerce of the city. Is there any man who can calculate (if this is tolerated), at what price he may safely contract to deliver articles for which he may receive orders, if he is to be regulated by the journeymen in an arbitrary jump from one price to another? It renders it impossible for a man, making a contract for a large quantity of such goods, to know whether he shall lose or gain by it.

Can he fix the price of his commodity for a future

(4828)

day? It is impossible that any man can carry on commerce in this way. He may be ruined by the difference and Shoe-prices made by the journeymen in the intermediate makers of time. What, then, is the operation of this kind of conduct upon the commerce of the city? It exposes it to inconvenience, if not ruin; therefore it is against the public welfare. How does it operate upon the defendants? We see that those who are in indigent circumstances and who have families to maintain, and who get their bread by their daily labor, have declared here upon oath, that it was impossible for them to hold out; the masters might do it, but they could not; and it has been admitted by the witnesses for the defendants, that such persons, however sharp Hardships and pressing their necessities, were obliged to stand to and oppression of a turnout, or never afterwards to be employed.

Can such a regulation be just and proper? Does it not tend to involve necessitous men in the commission of crimes? Consider these circumstances as they affect trade generally. Does this measure tend to make good workmen? No; it puts the botch, incapable of doing justice to his work, on a level with the best tradesman. The master must give the same wages to each. Such a practice would take away all the incentive to excel in workmanship or industry.

In every point of view, this measure is pregnant with public mischief and private injury; it tends to demoralize the workmen and to destroy the trade of the city.

What has been the conduct of the defendants in this instance? They belong to an association, the object of which is, that every person who follows the trade of a journeyman shoemaker, must be a member of their body. The apprentice immediately on becoming free, and the journeyman who comes here from distant places, are all considered members of this institution. If they do not join the body, a term of reproach is fixed upon them. The members of the body will not work with them, and they refuse to board or lodge with them. The consequence is, that every one is compelled to join the society. It is in evidence, that the defendants in this action all took a part in the last attempt to raise their wages; \* \* \* Keimer was their secretary, and the others were employed in giving notice, and were of the tramping committee. If the purpose of the association is well understood, it will be found they leave no individual at liberty to join the society or reject it. They compel him to become a member. Is there any

Conduct of  
the Strikers.

Trial of Boot reason to suppose that the laws are not competent to and Shoe-makers of redress an evil of this magnitude? \* \* \* \* \*

Philad.

What is the case now before us? A combination of workmen to raise their wages may be considered in a two-fold point of view; one is to benefit themselves—the other is to injure those who do not join their society. The rule of law condemns both. Hawkins, the greatest authority on the criminal law, has laid it down, that a combination to maintain another, in carrying out a particular object, whether true or false, is criminal. The authority cited from 8 Mod. Rep. does not rest merely upon the reputation of that book. It is adopted by Blackstone, and it is laid down as the law by Ld. Mansfield in 1793, that an act innocent in an individual, is rendered criminal by a confederacy to effect it.

Features of  
tyranny and  
compulsion.

One man determines not to work under a certain price and it may be individually the opinion of all. In such a case it would be lawful in each to refuse to do so, for if each stands alone, each may withdraw from his determination when he pleases. In the turn out of last fall, if each member of the body had stood alone, fettered by no promises to the rest, many of them might have changed their opinion as to the price of wages and gone to work; but it has been given to you in evidence, that they were bound down by their agreements, and pledged by mutual engagements, to persist in it, however contrary to their own judgment—the continuance in improper conduct may therefore well be attributed to the combination." The defendants were convicted.

// Case of Journeymen Cordwainers of New York.

In December, 1809, an indictment was found against the Journeymen Cordwainers of New York.<sup>1</sup> It charged a conspiracy, with the features of an unlawful club, rules and by-laws; refusal to work, or to let others work; threats, and a conspiracy to prejudice and impoverish, by indirect means, master shoemakers, and to hinder workmen who had broken their rules from following their art.

A motion to quash was made, on the ground that such combinations had never been held to be indictable at Common Law, even in England; that such indictments in England lie only by virtue of the Statutes of Laborers, which were not in force in the United States.<sup>2</sup> After

<sup>1</sup> Case of the Journeymen Cordwainers of the City of New York. Select cases adjudged in the Courts of the State of New York. Vol I, p. 111, New York. Printed & published by Isaac Riley, 1811; S. C. People v. Melvin, 2 Wheeler's Cr. Cases, 262.

<sup>2</sup> The argument of Mr. Sampson is one of the ablest, wittiest and most eloquent to be found in the books, and will repay a perusal. It abounds in curious and recondite matter.

argument, the decision being long delayed, the motion Case of Journeyman  
was waived, and the defendants went to trial and were neymen  
convicted.

Cordwainers  
of New York.

The Mayor charged the jury as follows: "There were two points of view in which the offence of a conspiracy might be considered; the one where there existed a combination to do an act, unlawful in itself, to the prejudice of other persons; the other where the act done, or the object of it, was not unlawful, but unlawful means were used to accomplish it. As to the first, there would be no doubt that a combination to do an unlawful act was conspiracy. The second depended on the common principle, that the goodness of the end would not justify improper means to obtain it. If, therefore, the defendants, in the present case, had confederated either to do an unlawful act, to the injury of others, or to make use of unlawful means to obtain their ends, they would be liable to a charge of conspiracy. The court did not mean to say, nor did the facts in the case require them to decide, whether an agreement not to work, except for certain wages, would amount to this offence, without any unlawful means taken to enforce it. \* \* \* The injury produced by unlawful combinations might affect any person or number of persons, as in the present case the master workmen, or the fellow journeymen of the defendants, or any other individuals. It appeared in evidence, that the society of journeymen, of which the defendants were members, had established a constitution, or certain rules for its government, to which the defendants had assented, and which they had endeavored to enforce. These rules were made to operate on all the members of the society, or others of their trade who are not members, and through them on the master workmen, and all were coerced to submit, or else the members of the society, which comprehended the best workmen in the city, were to stop the work of their employers. One of the regulations even required that every person of their trade, whom they thought worthy of notice, should become a member of the society, and of course become subject to its rules, and in case of neglect or refusal, it imposed fines on the person guilty of disobedience. When the society determined on any measure, it found no difficulty in carrying it into execution. If its ordinary functions failed, it enforced obedience by decreeing what was called a strike against a particular shop that had transgressed, or a general turn-out against all the shops in the city.

Case of Journey-  
men Cordwainers  
of New York.

These steps were generally decisive, and compelled submission in all concerned. Whatever might be the motives of the defendants, or their object, the means thus employed were arbitrary and unlawful, and their having been directed against several individuals in the present case, it was brought, in the opinion of the court, within one of the descriptions of the offence which had been given."

Pittsburgh  
Cordwainers.

In the borough of Pittsburgh, Pennsylvania, an interesting trial took place in 1815.<sup>1</sup> Judge Roberts, adopted the language of Chitty, that "all confederacies wrongfully to prejudice another, are misdemeanors at Common law, whether the intention is to injure his person, his property or his character," and charged the jury that the indictment was not to be regarded as a controversy between journeymen and their employers. "It is a prosecution to preserve the public peace, and protect your fellow citizens in the quiet enjoyment of their property, and the uninterrupted pursuit of their lawful business. With the regulation of wages, or the profit of the one or the other, you have nothing to do. It has been truly said, that every man has a right to affix what price he pleases on his labor. It is not for demanding *high prices*, that these men are indicted, but for employing *unlawful means* to extort these prices: for using means prejudicial to the community. \* \* \*

Conspiracies  
to coerce an  
employer un-  
lawful.

\* \* \* A conspiracy to compel an employer to have only a certain description of persons is indictable. It is a subversion of the liberty of the citizen. It has a direct tendency to restrain trade, and create a monopoly. A conspiracy to prevent a man from freely exercising his trade or profession in a particular place is indictable. In many cases of conspiracy, the *means* employed have the semblance of being *lawful*. They are frequently such as would be lawful in an individual. For instance, you have a right to have your boots, coat, or your hat made by whom you please. You may decline employing any particular shoemaker, tailor, or hatter at your pleasure. You may advise your neighbors not to employ a particular mechanic. But should you combine and confederate with others, to ruin any particular shoemaker, tailor or hatter, or other mechanic or tradesman, by preventing persons from employing him, this would be unlawful and indictable." \* \* \* Did they conspire to compel an employer to hire a certain descrip-

<sup>1</sup> Quoted in Trial of Twenty-four Journeymen Tailors, charged with a conspiracy before the Mayor's Court of the city of Philadelphia, September Sessions, 1827, Philadelphia, 1827.

tion of persons? If they did, they are indictable. On A Conspiracy this subject the evidence is equally clear. They did to prevent a not indeed threaten to beat the employer, nor to burn man from his shop. But the means they used were more efficient and menaced them with a punishment more dreadful; no less than a total destruction of his trade, and the means of his subsistence. Did the defendants conspire to prevent a man from freely exercising his trade in a particular place? If so, they are indictable. Did they conspire to compel men to become members of a particular society, or to contribute towards it? If they did, they are indictable." The next authority is one of great weight, having been decided by a very eminent Judge, of a court of last resort, after mature consideration. It is that of the *Comm. ex rel. Chew. v. Carlisle*,<sup>1</sup> brought before Judge Gibson, of the Supreme Court of Pennsylvania, by *Comm. v. habeas corpus*. The relators were in custody on a charge of conspiracy. It appeared that they were master ladies' shoemakers, and that they had agreed with each other not to employ any journeyman who would not consent to work at reduced wages; but, it also appeared, that the object went no further than to reestablish certain rates which had prevailed, a few months before, from which, there was reason to believe, the employers had been compelled to depart, by a combination among the journeymen.

A motion to discharge was made, on the ground that a combination to regulate wages is no offence by the Common law of Pennsylvania.

Judge Gibson used the following language: "In no book of authority has the precise point before me been decided. *Rex v. The Tailors of Cambridge* is found in a book (8 Mod. 10) which can claim nothing beyond the intrinsic evidence of reason and good sense apparent in the cases it contains. In the Trial of the Boot and Shoemakers of Philadelphia, there was no general principle distinctly asserted, but the case was considered only in reference to its particular circumstances, and in these it materially differed from that now under consideration. And in the Trial of the Journeymen Cordwainers of New York, the Mayor expressly omits to decide whether an agreement not to work, except for certain wages, would be indictable per se. There are, indeed, a variety of British precedents of indictments against journeymen for combining to

A leading case.

Review of preceding Cases.

<sup>1</sup> *Comm. v. Carlisle*, Brightly's Rep. (Pa.), 36, A. D. 1821.  
(4833)

Opinion of  
Judge Gib-  
son.

Combination  
criminal  
when preju-  
dicial to the  
public or op-  
pressive to  
individuals.

raise their wages, and precedents rank next to decisions as evidence of the law; but it has been thought sound policy in England to put this class of the community under restrictions so severe, by statutes that were never extended to this country, that we ought to pause before we adopt their law of Conspiracy, as respects artisans, which may be said to have, in some measure, indirectly received its form from the pressure of positive enactment, and which, therefore, may be entirely unfitted to the condition and habits of the same class here." After reviewing the history and nature of the crime of conspiracy,<sup>1</sup> and arguing that a combination, merely as such, is not illegal, he continues: "It will therefore be perceived that the *motive for combining*, or, which is the same thing, the nature of the object to be attained as a consequence of the lawful act is, in this class of cases, the discriminative circumstance. Where the act is lawful for an individual, it can be the subject of a conspiracy, when done in concert, only where there is a direct intention that injury shall result from it, or where the object is to benefit the conspirators to the prejudice of the public or the oppression of individuals, and where such prejudice or oppression is the natural and necessary consequence." After giving appropriate instances he concludes: "*I take it, then, a combination is criminal wherever the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting them to the power of the confederates, and giving effect to the purposes of the latter, whether of extortion or mischief.*" ACCORDING TO THIS VIEW OF THE LAW, A COMBINATION OF EMPLOYERS TO DEPRESS THE WAGES OF JOURNEYMAN BELOW WHAT THEY SHOULD BE, IF THERE WAS NO RECURRENCE TO ARTIFICIAL MEANS BY EITHER SIDE, IS CRIMINAL. \* \* \* \* \* But the motive may also be as important to avoid as to induce an inference of criminality. The mere act of combining to change the price of labor is, perhaps, evidence of impropriety of intention, but not conclusive; for if the accused can show that the object was not to give an undue value to labor, but to foil their antagonists in an attempt to assign to it, by surreptitious means, a value which it would not otherwise have, they will make out a good defense. In the trial of the Journeyman Shoemakers of Philadelphia, the Recorder, a lawyer of undoubted talents, instructed the jury that it was 'no matter what

<sup>1</sup> See ante, pp. 102-103.  
(4834)

the defendants motives were, whether to resist the supposed oppression of their masters, or to insist upon extravagant wages; but this, although perfectly true as applicable to that case, where the combination was intended to coerce not only the employers but third persons, is not of universal application. A combination to resist oppression, not merely supposed, but real, would be perfectly innocent: for where the act to be done, and the means of accomplishing it are lawful, and the object to be attained is meritorious, combination is not conspiracy, \* \* \* \* \*. It must therefore be obvious that the point in this case is, whether the relators have been actuated by an improper motive; and that, being a question purely of fact \* \* \* I am bound to remand them."

When combination may be innocent.

Unfortunately, the subsequent proceedings in the case were never reported, but the doctrines laid down by Judge Gibson underwent review in a famous trial in 1827;<sup>1</sup> in which stress was laid upon the criminality of the means employed.

The Indictment charged:

1. Conspiracy to raise their wages, and promote their own interests as journeymen, and to lessen the profits and injure the interests of their employers, the master tailors.
2. Conspiracy to compel their employers to reinstate certain persons who had been discharged for demanding the wages they conceived themselves entitled to, Journeymen but which the masters, in whose employ they had been, Tailors. Trial of Twenty-four
- alleged they had not agreed to pay.

3. Conspiracy to injure, embarrass and obstruct the masters in their lawful business.

4. A general conspiracy to injure and oppress certain journeymen tailors and master workmen, who were no parties to the original agreement, or of the general combination. The means adopted were:

1. Desisting from work.
2. Assembling in the streets—obstructing workmen in the employ of the masters,—using threats and promises to induce them to leave it—pursuing one and assaulting and beating another, and sending a threatening letter to a third.

The Recorder, the Hon. Joseph Reed, in a luminous and interesting charge, instructed the jury that "there

<sup>1</sup> Trial of Twenty-four Journeymen Tailors, charged with a Conspiracy, before the Mayor's Court of the City of Philadelphia, September Sessions, 1827. Printed in Pamphlet at Philadelphia, 1827.

Trial of  
Twenty-four  
Journeymen  
Tailors.

are two points of view in which the offence of conspiracy may be considered; the one, where there exists a combination to do an act, unlawful in itself, to the injury of an individual, or of the public, taking the term prejudice as applicable to an individual, with some qualification, and not considered as meaning an injury to the pecuniary interest of another, which may be easily and innocently, and, to the public often advantageously, effected by that personal injury which results from the depression of the price of labor by successful competition by others in the same occupation, or from other obvious and natural causes; not considered as that kind of injury and prejudice which a man suffers when he is disappointed in a good bargain, or profitable contract, or does not derive the same profit, the usual gain, and often artificial advance on his skill and labor on which he had calculated, either from a monopoly secured, or from other causes which he had supposed were exclusively with his own control. The other is when the act done, or the object of it was not unlawful, but unlawful means were used to accomplish it; which depends on the common principle, that the goodness of the end will not justify improper means to attain it."

Meaning of  
the phrase  
"artificial  
means."

After refusing to accept the English decisions, and rejecting as vague and unsatisfactory the language of Judge Roberts in the Pittsburgh case "that when divers persons confederate by indirect means to prejudice a third person, it is a conspiracy," he expressly adopts the law as stated by Judge Gibson in *Comm. v. Carlisle*, but states: "By artificial means, I cannot suppose he intended an agreement among the parties themselves not to work for less wages than they had agreed to accept, especially when he says, that in the New York case the mayor expressly omits to decide whether such an agreement is indictable *per se*." He continues: "If there was an agreement among the journeymen to operate on other parties, on innocent third persons, not privy to the original contract, disclaiming its fancied benefits, and unwilling to incur its perils, such an agreement would no doubt be criminal, especially if carried into execution." He then proceeds to consider the overt acts, and states that if there was a mere difference of opinion as to the construction of the contract between employers and the journeymen, and the parties to it had refused, the one to work and the other to employ, "I am not prepared to say that an agreement to that effect in either, provided it did not extend beyond themselves, would be illegal." As to the legality of the act of leav-

ing the service of the employers, unless they would re-employ men who had been discharged, he could discover nothing to constitute a legal crime, if no other consequences were intended to follow than leaving off work, and no illegal means were adopted, and if the rights of other journeymen were not affected. He plainly intimates, however, that had the Society of Journey-men Tailors interfered by rules operating oppressively not only on members but on others, or had the society interposed by all the means in their power to compel the employers to reemploy the men discharged, it would present a different case, and be the same in principle as the cases of the Boot and Shoemakers of Philadelphia, the Journey-men Cordwainers of New York, and the Pittsburgh case, where the defendants were all charged as members of associations, the constitutions and by-laws of which became the subjects of investigation and adjudication. He then dwells upon disorderly acts, amounting to riot, and especially upon the assembling of the discharged workmen in squads in the streets, following every person who left the establishment of the employers to ascertain who had accepted the work which they had refused, and rules that these were acts of oppression and injustice to individuals who had no part in the controversy, and were therefore criminal.

He sums up the case in these well-chosen words: "These young men have an undoubted right, by agreement among themselves, to regulate their own conduct; to ask as much as they please for their services, to continue or to leave the service of any employer, as reason, inclination or caprice should dictate; but the moment they interfere with the rights and privileges of others, equally valuable and sacred as those, which, in this prosecution, these defendants so jealously contend for, they are criminal, and if the means employed be combination, they become conspirators."

In the case of *The People v. Trequier*,<sup>1</sup> the defendants were indicted for a conspiracy to compel their employer to discharge a hatter, because he had worked for "knocked-down wages." The Court charged the jury that the injury and ruin of the prosecutor appeared to be the object of the conspiracy. The defendants had not only remonstrated against the employment of their former fellow-workman, but had, by their own refusal to work, forced their employer to abandon business. It

Trial of  
Twenty-four  
Journeymen  
Tailors.

Coercion of  
third parties  
the test.

Interference  
with the  
rights of  
others.

*People v.  
Trequier.*

<sup>1</sup> *The People v. Trequier*, 1 Wheeler's Cr. C., 142. Tried in City Hall, New York, 1823.

was contended that the association among the journeymen had been resorted to to counteract the effect of a combination among the master hatters, but it was answered by the Court that one conspiracy cannot justify another, and that however objectionable the conduct of the masters might have been, it certainly furnished no excuse to the journeymen. A doctrine, it is to be observed, somewhat at variance with the view expressed by Judge Gibson.<sup>1</sup>

|| People v.  
Fisher.

Case.

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Su N. f. 160.

A leading case arose in the State of New York in People v. Fisher,<sup>2</sup> where C. J. Savage of the Supreme Court held, in an elaborate opinion, that it was a violation of the revised statutes, *forbidding a conspiracy to commit any act injurious to trade or commerce*, for a body of journeymen shoemakers to associate for the purpose of preventing any shoemaker in Geneva, whether members of the association or not, from working below certain rates. This object the association sought to obtain by imposing a penalty upon any shoemaker who worked for less, and by a mutual agreement among the members of the association that they would not work for any master shoemaker who should employ a journeyman who infringed their rules unless such journeyman paid a fine to the association. The object was carried into effect still further by a number of the members of the association quitting the employment of a master shoemaker, who had employed a journeyman at rates below those which the association had agreed upon.

Coercion of third parties } It is to be noted that the feature which distinguishes the class of cases which has been reviewed from those now to be considered, is, that in all of them coercive measures were resorted to, which operated upon strangers to the combination; that it was insisted that not only the masters, but also journeymen, not members of the association, should comply with the regulations established by the confederacy. As this was an undoubted interference with the rights of others, coercing journeymen to refuse work except at certain rates, and preventing masters from employing men at

<sup>1</sup> In Emanuel's Case, 6 City Hall Rec., 33, it was held—on the traverse of an indictment for a Conspiracy against several sailor boarding house-keepers for combining and binding themselves together not to ship any seamen at the offices of certain notaries—that any abuses which might have been practiced by such notaries in shipping seamen, furnished no defence and could not be put in evidence.

<sup>2</sup> The People v. Fisher, 14 Wendell, 9, A. D. 1835.

less than certain rates, such conspiracies have been held to be indictable.

A second and distinct class of cases upholds the legality of associations to maintain advanced rates by not affecting rules binding solely upon members of the association, third parties, and having no operation upon third parties.

Of this class the leading illustration is the well known case of Comm. v. Hunt,<sup>1</sup> which turned, however,

upon the defects of the indictment, which was full of omissions as to the means to be employed. The opinion was delivered by C. J. Shaw, who said of the first

count: "Stripped of the introductory recitals and alleged injurious consequences, and of the qualifying epithets attached to the facts, the averment is this;

that the defendants and others formed themselves into a society, and agreed not to work for any person who should employ any journeyman or other person not a member of such society, after notice given him to dis-

charge such workman. The manifest intent of the association is, to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful.

It would give them a power which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones. If the latter were the real and actual object and susceptible of proof, it should have been specially charged. Such an association might be used to afford each other assistance in times of poverty, sickness, and distress; or to raise their intellectual, moral, and social condition; or to make improvement in their art; or for other proper purposes.

Or the association might be designed for purposes of oppression and injustice. But in order to charge all those who become members of an association with the guilt of a criminal conspiracy, it must be averred and proved that the actual, if not the avowed object of the association was criminal.

An association may be formed, the declared objects of which are innocent and laudable, and yet they may have secret articles, or an agreement communicated only to the members, by which they are banded together for purposes injurious to the peace of society or the rights of its members.

Such would undoubtedly be a criminal conspiracy on proof of the fact, however meritorious and praiseworthy the declared objects might be."

"Nor can we perceive that the objects of this association, whatever they may have been, were to be ob-

Comm. v.  
Hunt.

Opinion of C.  
J. Shaw.

In the indictment it must be averred and proved that the object of association was criminal.

<sup>1</sup> Comm. v. Hunt, 4 Metcalf, 111, A. D. 1845.

Opinion of C. tained by criminal means. The means which they proposed to employ, as averred in this count, and which, as we are now to presume, were established by the proof, were, that they would not work for a person, who, after due notice should employ a journeyman not a member of their society. Supposing the object of the association to be laudable and lawful, or at least not unlawful, are these means criminal? The case supposes that these persons are not bound by contract, but free to work for whom they please, or not to work, if they so prefer. In this state of things, we cannot perceive that it is criminal for men to agree together to exercise their own acknowledged rights in such a manner as best to subserve their own interests. One way to test this is to consider the effect of such an agreement, where the object of the association is acknowledged on all hands to be a laudable one. Suppose a class of workmen, impressed with the manifold evils of intemperance, should agree with each other not to work in a shop in which ardent spirit was furnished, or not to work in a shop with any one who used it, or not to work for an employer, who should, after notice, employ a journeyman who habitually used it. The consequences might be the same. A workman who should still persist in the use of ardent spirit would find it more difficult to get employment; a master employing such an one might, at times, experience inconvenience in his work, in losing the services of a skillful but intemperate workman. Still it seem to us that as the object would be lawful, and the means not unlawful, such an agreement could not be pronounced a criminal conspiracy."

Comm. v.  
Hunt.

And again in reference to the second count, where substantially the same offence was charged, the court said, "the second count, omitting the recital of unlawful intent and evil dispositions, and omitting the direct averment of an unlawful club or society, alleges that the defendants, with others unknown, did assemble, conspire, confederate, and agree together not to work for any master or person who should employ any workman not being a member of a certain club, society or combination called the Boston Journeyman Bootmaker's Society, or who should break any of their by-laws, unless such workman should pay to said club such sum as should be agreed upon as a penalty for the breach of such unlawful rules. It is simply an averment of an agreement amongst themselves not to work for a person, who should employ any person not a member of a certain association. It sets forth no illegal or

criminal purpose to be accomplished, nor any illegal or criminal means to be adopted for the accomplishment of any purpose. It was an agreement, as to the manner in which they would exercise an acknowledged right to contract with others for their labor."

The learned jurist continues : " From this count in the indictment, we do not understand that the agreement was, that the defendants would refuse to work for an employer, to whom they were bound by contract for a certain time, in violation of that contract; nor that they would insist that an employer should discharge a workman engaged by contract for a certain time, in violation of such contract. It is perfectly consistent with everything stated in this count, that the effect of the agreement was, that when they were free to act, they would not engage with an employer, or continue in his employment, if such employer, when free to act, should engage with a workman, or continue a workman in his employment, not a member of the association. *If a large number of men engaged for a certain time, should combine together to violate their contract, and quit their employment together, it would present a very different question.* Suppose a farmer, employing a large number of men engaged for the year, at fair monthly wages, and suppose that just at the moment that his crops were ready to harvest, they should all combine to quit his service, unless he would advance their wages, at a time when other laborers could not be obtained. It would surely be a conspiracy to do an unlawful act, though of such a character, that if done by an individual, it would lay the foundation of a civil action only, and not of a criminal prosecution. It would be a case very different from that stated in this count. \* \* \* \* \*

We think, therefore, that associations may be entered into, the object of which is to adopt measures that may have a tendency to impoverish another, that is, to diminish his gains and profits, and yet so far from being criminal or unlawful, the object may be highly meritorious and public spirited. The legality of such an association will therefore depend upon the means to be used for its accomplishment. If it is to be carried into effect by fair or honorable or lawful means, it is, to say the least, innocent; if by falsehood or force, it may be stamped with the character of conspiracy. It follows as a necessary consequence, that if criminal and indictable, it is so by reason of the criminal means intended to be employed for its accomplishment; and as a further

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Asso. v.  
Walsh.

legal consequence, that as the criminality will depend on the means, those means must be stated in the indictment."

A similar result was reached in the case of *The Master Stevedores Association v. Walsh*,<sup>1</sup> which was that of an action to recover a penalty for the violation of a by-law imposing the penalty upon any member of the Stevedores Association who should work for less than the prices fixed by the association for discharging vessels. The defendant was a member of the association. It was held that such an association was not an unlawful combination to commit an act injurious to trade and commerce; that such a by-law was not unlawful, nor was it in restraint of trade; and the by law being one which the association had the power to make, a penalty could be lawfully attached to its violation.

Opinion of J. Daly.

In determining the case Judge Daly emphasizes the fact that the by-law was limited in its operation to the members of the association, and that it was sought to be enforced against one who had voluntarily submitted to it. He distinguishes it in these respects, from prior adjudications, especially from *The People v. Fisher*, while he sharply criticizes the length to which C. J. Savage went in that case, denying that there had ever been a rule of the Common Law that any mutual agreement among workmen for the purpose of raising their wages is an indictable offence *per se*, or that they are guilty of a conspiracy, if, by preconcert and arrangement, they refuse to work unless they receive an advance of wages. He cites with approval the language of Judge Gibson in *Comm. v. Carlisle*, and then falling back upon *Comm. v. Hunt*, declares that it laid down the broad proposition that men are free to work for whom they please, or not to work if they prefer it, and that it is not criminal for them to agree to exercise this right in such manner as may best subserve their own interests, provided they do not interfere with the rights of third parties. He also alludes to the case of the *Hartford Carpet Weavers*,<sup>2</sup> where C. J. Williams told the jury that if the real nature of the agreement between the defendants was an agreement not to work below certain prices, that that was not an indictable offence, nor the subject of a civil action. He then comments upon the apprehension that if this be conceded,

<sup>1</sup> *The Master Stevedores Association v. Walsh*, 2 Daly, N. Y., C. P. Rep., p. 5, A. D. 1867.

<sup>2</sup> *The Case of the Hartford Carpet Weavers*. Printed at Hartford in 1836.

it would place employers wholly at the mercy of their Stevedores' workmen, and declares it to be an imaginary one, concluding thus:

"It is better for the law to leave such matters to the action of the parties interested—to leave the master workmen or journeymen free to form what associations they please in relation to the rate of compensation, so long as they are voluntary. They mutually act upon each other. If the workmen demand too much or the masters offer too little, such a state of things cannot continue long, or be productive of any serious inconvenience to the community, as that party must ultimately give way whose pretensions are not founded on reason and justice. It is lawful for any number of journeymen or master workmen to agree on the one part, that they will not work below certain rates, or that they will not pay above certain prices; but any association or combination for compelling journeymen or employers to conform to any rule, regulation or agreement fixing the rate of wages, to which they are not parties, by the imposition of penalties, by agreeing to quit the service of any employer who employs a journeymen below certain rates, unless the journeymen pays the penalty imposed by the combination, or by menaces, threats, intimidation, violence or other unlawful means, is a conspiracy for which the parties entering into it may be indicted."

In the case of Carew *v.* Rutherford,<sup>1</sup> although not one of an indictment for a criminal conspiracy, but an action in tort sounding in damages, the Supreme Court of Massachusetts uses the following language, which is pertinent to the discussion of the subject:

"We have no doubt that a conspiracy against a mechanic, who is under the necessity of employing workmen in order to carry on his business, to obtain a sum of money from him, which he is under no legal liability to pay, by inducing his workmen to leave him, and by deterring others from entering into his employment, or by threatening to do this, so that he is induced to pay the money demanded, under a reasonable apprehension that he cannot carry on his business without yielding to the illegal demand, is an illegal, if not a criminal conspiracy; that the acts done under it are illegal; and that the money thus obtained may be recovered back, and, if the parties succeed in injuring his business, they are liable to pay all the damage thus

<sup>1</sup> *Carew v. Rutherford*, 106 Mass., 13, A. D. 11 LAW OF CRIM. CON. (4843).

done to him. It is a species of annoyance and extortion which the Common Law has never tolerated."

Carew v.  
Rutherford.

"This principle does not interfere with the freedom of business, but protects it. Every man has a right to determine what branch of business he will pursue, and to make his own contracts with whom he pleases and on the best terms he can. He may change from one occupation to another, and pursue as many different occupations as he pleases, and competition in business is lawful. He may refuse to deal with any man or class of men. And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions."

Freedom of  
will and ac-  
tion.

It is interesting to note that in the same year in which the case of the Master Stevedores Association v. Walsh was decided, the Supreme Court of New Jersey took a somewhat different view in State v. Donaldson.<sup>1</sup> The defendants conspired and agreed to quit their common employment, unless two workmen, who were named, should be dismissed by their common employer. In pursuance of the conspiracy they gave notice of their agreement to their employer, and required him to discharge the men, which being refused, they quitted their employment and remained away until their demand was complied with.

It is to be observed, however, that in this case, there was present the feature of coercion of strangers.

State v.  
Donaldson.

C. J. Beasley delivered the opinion, and after a most elaborate review of the authorities, declared: "It appears to me that it is not to be denied that the alleged aim of this combination was unlawful; the effort was to dictate to this employer whom he should discharge from his employ. This was an unwarrantable interference with the conduct of his business, and it seems impossible that such acts should not be, in their usual effects, highly injurious. How far is this mode of dictation to be held lawful? If the manufacturer can be compelled in this way to discharge two or more hands, he can, by similar means, be coerced to retain such workmen as the conspirators may choose to designate. So his customers may be proscribed, and his business in other respects controlled. I cannot regard such a course of conduct as lawful. It is no answer to the above considerations to say, that the employer is not

Opinion of C.  
J. Beasley.

Dictation to  
an employer  
is unlawful.

<sup>1</sup> State v. Donaldson, 3 Vroom (N. J.), 151, A. D. 1867.  
(4844)

compelled to submit to the demand of his employés; that the penalty of refusal is simply that they will leave his service. There is this coercion: the men agree to leave simultaneously, in large numbers and by preconcerted action. We cannot close our eyes to the fact, that the threat of workmen to quit the manufacturer, under these circumstances, is equivalent to a threat, that unless he yield to their unjustifiable demand, they will derange his business, and thus cast a heavy loss upon him. The workmen who make this threat, understand it in this sense, and so does their employer. In such a condition of affairs, it is idle to suggest that the manufacturer is free to reject the terms which the confederates offer. In the natural position of things, each man acting as an individual, there would be no coercion; if a single employé should demand the discharge of a co-employé, the employer would retain his freedom, for he could entertain or repel the requisition without embarrassment to his concerns; but in the presence of a coalition of his employés it would be but a waste of time to pause to prove that, in most cases, he must submit, under pain of often the most ruinous losses, to the conditions imposed on his necessities. It is difficult to believe that a right exists in law, which we can scarcely conceive can produce, in any posture of affairs, other than injurious results. It is simply the right of workmen, by concert of action, and by taking advantage of their position to control the business of another. I am unwilling to hold that a right which cannot, in any event be advantageous to the employé, and which must be always hurtful to the employer, exists in law. In my opinion, this indictment sufficiently shows that the force of the confederates was brought to bear upon their employer for the purpose of oppression and mischief, and that this amounts to a conspiracy.

I also think this result is sustained by all the judicial opinions which have heretofore been expressed on this point."

He then reviews the English authorities and says: "As to the case of the Commonwealth v. Hunt, it is clearly distinguishable, and I concur entirely, as well with the principles embodied in the opinion which was read in the case, as in the result which was attained. The foundation of the indictment in that case, was the formation of a club by journeyman boot-makers, one of the regulations of which was, that no person belonging to it, should work for any master workmen who should employ any journeyman or other workman who should

Threats to quit work in a body, unless certain men are employed are unlawful.

State v. Don-  
aldson.

not be a member of such club. Such a combination does not appear to possess any feature of illegality, for the law will not intend, without proof, that it was formed for the accomplishment of any illegal end. The force of this association was not concentrated with a view to be exerted to oppress any individual, and it was consequently entirely unlike the case of men who take advantage of their position to use the power, by a concert of action, which such position gives them, to compel their employer to a certain line of conduct. The object of the club was to establish a general rule for the regulation of its members; but the object of the combination, in the case now before this Court was to occasion a particular result which was mischievous, and by means which were oppressive. The two cases are not parallel, and must be governed by entirely different considerations. The motion to quash should not prevail."

Comm. v.  
Curren.

So, in the case of Comm. v. Curren,<sup>1</sup> it was ruled that no body of men has a right to dictate to the owner of a colliery whom he shall employ to work it, nor to say that the work shall not be done by those whom the owners may employ to do it. If a society, or union, acting in its associate capacity, bring about a strike and uphold the demands of the strikers, then all who are members of the association and participate in its action are guilty of a criminal conspiracy.

Unlawful  
Dictation.

The case of the People v. Van Nostrand *et al.*<sup>2</sup> relates to the binding out of an apprentice. In 1867, Mr. Dawson, the editor of the *Historical Magazine*, made an arrangement with a master bricklayer and mason of the name of Dunham, to have his son, a lad of eighteen, instructed in the latter's business. No indentures were signed, but it was agreed verbally that the boy was to have his wages increased as he advanced in skill. Not long after, certain of Dunham's workmen, who were members of the Bricklayers' Benevolent Protective Union, (one of whose articles provided that no member of the union should work with a non-member, and that the number of apprentices allowed to one employer should be two,) objected to the presence of the boy among them unless he should be bound as an apprentice under their rules, and threatened to leave unless their demands were complied with. This was not done and the men struck. Subsequently the boy was discharged, until his father was ready to indenture him. A civil action was

<sup>1</sup> Comm. v. Curren, 3 Pitts. Rep., 143, A. D. 1869.

<sup>2</sup> For this case, which is not reported, I am indebted to the courtesy of Henry B. Dawson, Esq., of Morrisania, New York.

brought against several of the members of the union to recover damages for the loss of wages to the father, an apprentice which resulted in the plaintiff's favor. Application was made for the reinstatement of the boy, which, owing to the unyielding attitude of the union men, was refused. An indictment was then found under the Revised Statute of New York—the same which was considered in the *People v. Fisher*—and the defendants were convicted. In charging the jury, Judge Cochrane declared that they must determine whether the offence charged was injurious to public trade. Freemen should be left free to select their professions, and to work how and for whom they pleased. The public were concerned that trade should not be made unduly burdensome to those who Combinations injurious to trade and commerce.

avail themselves of its agency. Persons must not combine together to make regulations to impede public business. The word 'trade' was to be taken in a broad sense. It included all industries in which the public was interested, whether typified by the ship or the industries of home. It is equally a violation of the statute to do or consult to do any act injurious to the public in respect to building their houses, or to making their shoes or hats. The overt act was the leaving the employment of Dunham; the object being to compel the boy to be duly indentured as an apprentice. As the boy was not a mason, and not an apprentice, the articles of the union did not apply to him. The jury was to determine whether the refusal of the men to tolerate an unindentured apprentice among them was injurious to public trade. It was not a private action, nor a question of damage to the boy or to the father, but of injury to the public. It was a matter of criminal offence, involving the idea of an assault upon the public interests, rights, or welfare.

Such was the condition of the law prior to the adoption of Statutory Modification. in several of the States.

In 1870, it was enacted in New York, that nothing in N. Y. Statute the Revised Statutes relating to conspiracy should be considered to restrict or prohibit the orderly and peaceable assembling or coöperation of persons employed in any profession, trade, or handicraft, for the purpose of securing an advance in the rate of wages or compensation, or for the maintenance of such rate.<sup>1</sup>

The Pennsylvania Statute of 1872, while in broader terms, expressly provided that it shall not extend to the protection of those who in any way hindered persons

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<sup>1</sup> See Appendix II, p. (4847)

who desired to labor for their employers from so doing, or others from being employed as laborers,<sup>1</sup> while the later act of 1876, provided that the use of force, threat or menace of harm to persons or property, shall alone be regarded as a hindrance.

Since then, the following cases have arisen:

In *People v. Wilzig*,<sup>2</sup> a case of boycotting, it was ruled to be criminal for a number of men to band together for the purpose, through the power of combination, of injuring the business of another, by parading up and down before his door, by placarding themselves with the word "boycott," by advising the passers-by not to patronize the establishment, by distributing printed circulars filled with accusations and justifications of the "boycott," and by other devices calculated to induce the public to keep away from the business place of the employer. In this case extortion, force, threats and intimidation were present; and it was held that it was sufficient to constitute intimidation, if the attitude of those engaged in the overt act was threatening, and that this might be shown by their numbers, methods, placards, circulars and devices. It is not necessary to show that they resorted to acts of physical violence.

In considering how far the old law had been modified by the statute, Judge Barrett said: "Formerly a conspiracy of workingmen to raise the rate of wages was criminally condemned as an act injurious to trade or commerce. But, now, it has been legislatively decreed that the orderly and peaceable assembling or co-operation of persons employed in any calling, trade or handicraft, for the purpose of obtaining an advance in the rate of wages and compensation, or of maintaining such rate, is not a conspiracy. This is what laboring men may lawfully do. What they may not do is to combine together for the purpose of preventing other people from working at prices to suit themselves."

In the Holdorf case,<sup>3</sup> the same judge said: "A number of men may combine together to obtain larger wages for themselves in any employment. They may stop working, if their employer unjustly refuses to accede to their just demands. So far they are right. They may also do their utmost, by speech, writing, suasion, appeal, and in every other lawful way, to persuade their fellow workingmen not to fill their places, nor to aid the employer in his unjust attitude. But

<sup>1</sup> See Appendix II, p.

<sup>2</sup> *People v. Wilzig*, 4 N. Y. Cr. Law Rep., 403, A. D. 1886.

<sup>3</sup> *Ibid.* 418.

the very moment that other men, disregarding all appeals and entreaties, find it to their own interest to fill the vacant places, they cannot be stopped by violence, threats or intimidation. The moment workingmen resort to violence to prevent their brethren from filling the vacant places, the combination becomes criminal, and organized labor becomes organized law-breaking.<sup>1</sup> To the same effect is *People v. Kostka*,<sup>1</sup> where a number of men conspired to injure the business of a bakery by congregating near the door of the establishment, and distributing printed circulars. It was ruled that the mere fact that no violence was used in the street was not conclusive; nor was it necessary that there should have been a direct threat. It was sufficient if the jury believed that the attitude actually presented by the distributors of the circulars was one of intimidation, either to the passers-by, or to the proprietor of the business.

In the case of *The Old Dominion Steamship Company v. McKenna et al.*,<sup>2</sup> all members of District Assembly No. 49, and of the Executive Board of The Ocean Association of the Longshoremen's Union, Judge Brown, in the Circuit Court of the United States, after fully citing the authorities, said: "This action was brought to recover \$20,000 damages, alleged to have been sustained by the plaintiff through the unlawful action of the defendants in the recent strike of the longshoremen, and in their attempt to boycott the plaintiff in its business as a common carrier. The defendants are alleged to constitute or to style themselves an "Executive Board of the Ocean Association of the Longshoremen's Union."

The plaintiff was engaged in the legal calling of common carrier, owning vessels, lighters, and other craft used in its business, in the employment of which numerous workmen were necessary, who, as the complaint avers, were employed "upon terms as to wages which were just and satisfactory."

The defendants, not being in plaintiff's employ, and without any legal justification so far as appears—a mere dispute about wages, the merits of which are not stated, not being any legal justification—procured plaintiff's workmen in this city and in southern ports to quit work in a body for the purpose of inflicting in-

<sup>1</sup> *The People v. Kostka*, 4 N. Y. Cr., Law Rep., 429, A. D. 1886.

<sup>2</sup> *The Old Dominion Steamship Co. v. McKenna*, 35 Albany Law Journal, March 12, 1887, p. 208.

Old Dominion Steamship Co. v.  
McKenna, et al.

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jury and damage upon the plaintiff until it should accede to the defendants' demands, which the plaintiff was under no obligation to grant, and that such procurement of workmen to quit work, designed to inflict injury on the plaintiff and not being justified, constituted in law a malicious and illegal interference with the plaintiff's business which is actionable.

After the plaintiff's workmen, through the defendants' procurement, had quit work, the defendants, for the further unlawful purpose of compelling the plaintiff to pay such a rate of wages as they might demand, declared a boycott of the plaintiff's business and attempted to prevent the plaintiff from carrying on any business as common carriers, or from using or employing its vessels, lighters, &c., in that business, and endeavored to stop all dealings of other persons with the plaintiff by sending threatening notices or messages to its various customers and patrons, and to the agents of various steamship lines, and to wharfingers and warehousemen usually dealing with the plaintiff, designed to intimidate them from having any dealings with it through threats of loss and expense in case they dealt with plaintiff by receiving, sharing, or transmitting its goods or otherwise; and that various persons were deterred from dealing with the plaintiff in consequence of such intimidations and refused to perform existing contracts, and withheld their former customary business, greatly to the plaintiff's damage.

The acts last mentioned were not only illegal, rendering the defendants liable in damages, but also misdemeanors at Common Law as well as by section 168 of the Penal Code of this State.

Coercion, obstruction, or annoyance of workmen or employers are actionable.

Associations have no more right to inflict injury upon others than individuals have; all combinations and associations, designed to coerce workmen to become members or to interfere with, obstruct, vex or annoy them in working or in obtaining work because they are not members, or in order to induce them to become members, or designed to prevent employers from making a just discrimination in wages paid to the skilful and the unskilful, to the diligent and the lazy, to the efficient and the inefficient, and all associations designed to interfere with the perfect freedom of employers in the proper management and control of their lawful business, or to dictate in any particular the terms upon which their business shall be conducted by means of threats of injury or loss, by interference with their property or traffic, or with their lawful employ-

ment of other persons, or designed to abridge any of these rights, are illegal combinations or associations, and all acts done in furtherance of such intentions by such means and accompanied by damage are actionable."

Under the Pennsylvania statutes the following case arose: Comm. ex rel. Vallette v. Sheriff.<sup>1</sup>

The defendants were charged with having unlawfully conspired to injure the firm of Sherman & Co., by statute molesting, intimidating and annoying said firm in their business.

The defendants, representing a trades union association, called upon a member of the firm at their office and gave notice that the association had decided upon an increase of wages to be paid to journeymen printers employed in the offices of Philadelphia, and, in case the increased rates were not paid by the said firm to the persons in their employ, there would be a strike on the part of the employés. The demand for increase of compensation having been refused, the defendants proceeded to the shop of the complainants where their journeymen were at work, and notified them that the advanced rate of compensation having been refused, there would be a strike, or that a strike was ordered, and that, after that day, they should cease to work for Sherman & Co. until their wages had been advanced to the standard fixed by the union. All of the workmen, with one exception, including the foreman of the office, were members of the union, and, according to the law of their organization, were required to obey the rules and regulations of the body of which the defendants were the duly appointed representatives. President Judge Allison, in delivering the opinion of the court asks "Does this conduct on the part of the defendants amount to an unlawful conspiracy, for which they may be indicted and placed on trial?" He assumes that prior to the Act of June 14, 1872, and the supplemental Act of April 20, 1876, the law, as then settled, would have required this question to be answered in the affirmative. But after quoting the Act of 1872, he continues: "This Act sweeps away in a few words nearly all of the law which had been long established in England, and adopted in this country, touching organizations or combinations of workingmen, having for their object the regulation of amounts to be paid to them for their work, by combination in clubs or societies. That which had

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<sup>1</sup> Comm. ex rel. Vallette v. Sheriff, 15 Phila. Rep., 393.

(4851)

Comm. v.  
Sheriff.

Changes  
wrought by  
legislation in  
the law of  
Pennsylva-  
nia.

been held to be contrary to law is declared to be lawful, and that which before would have subjected workingmen to criminal prosecution, the Act says, may be done without incurring the risk of indictment. It is, therefore, no longer unlawful to combine and organize and adopt regulations, having for their object the increase of wages or the consideration to be paid for labor. The effect of such combination may be to prejudice the interest of the community, and may tend to injure individuals in their business by causing the employed to cease to work for an employer, and thus compel him to submit to a book or standard of prices, which had been fixed by workingmen who had combined and organized for that purpose. The Act contains, however, the material proviso that whoever shall *hinder* persons who desire to labor for their employers from so doing, or other persons from being employed as laborers, shall be subject to prosecution and punishment, as for a criminal conspiracy. What constituted such hindrance was not defined, and it was for the purpose of removing all ambiguity connected with the word *hinder*, in the Act of 1872, that the supplemental law of April 20, 1876, was passed, which declares that the construction to be given to the proviso, contained in the Act of 1872 shall be that the use of lawful and peaceful means, having for their object a lawful purpose, shall not be regarded as 'in any way hindering' persons who desire to labor; and that the use of force, threat or menace of harm to persons or property shall *alone* be regarded as in any way hindering persons, who desire to labor for their employers, from so doing, or other persons from being employed as laborers.

Under this statement of the law of Pennsylvania, as it stands to-day in full force, the only question for our consideration is, do the acts of the defendants, representing and acting in behalf of a labor society, club or organization, subject them to indictment? Does calling together upon the firm of Sherman & Co., demanding an increase of wages for the journeymen printers employed by the firm, with notice that a refusal would result in a strike of the workmen, followed by the defendants going together to the workshop of the prosecutors, and notifying the journeymen that a strike was ordered, constitute the use of force, threat or menace of harm to the persons or property of the firm, or to the members of the firm of Sherman & Co., or to their employés? Are these means otherwise than lawful and peaceful, and have they for their object a lawful pur-

pose? We are unable to see wherein they offend against the law." He continues: "It is true, that striking, as it is called, or refusing to work, might, and probably would, result in harm to the business of Sherman & Co., but that is the result of what the workmen may now lawfully do in their associated capacity, and does not constitute a threat or menace of harm in the sense in which these terms are to be understood as they are used in the Act of 1876. The fact is not to be overlooked that it had too often been a matter of just complaint that workmen resorted to actual force, to threats, and menace of injury to persons and property in the enforcement of a demand for an advanced rate of wages. Upon this the law always frowned. Such acts were always illegal. When done by agreement between two or more persons, they amounted to overt acts, growing out of a criminal conspiracy, which tended to the injury of the community and to the subversion of individual rights of persons and property. This was the wrong referred to in the Act of 1876, which it was declared would subject the offenders to punishment in the future, as it had in the past. Such acts were declared to be outside of the protection contemplated by the legislation which we are now considering, because such means are neither lawful nor peaceful, and because they are calculated to improperly hinder persons who desire to labor for their employers from so doing, and to prevent other persons from being employed as laborers."

It was further urged on behalf of the Commonwealth that the intrusion of the defendants into the shop or work room of the prosecutors was in itself a trespass, and, therefore, illegal, and that the means employed to carry into effect the purposes of the defendant were not sanctioned by the Act of 1876. It was not shown, however, that the defendants were forbidden to enter the shop, or that they were ordered to depart after they had entered, or that their conduct was not peaceable and orderly. The foreman having charge of the shop was present, and knew of the presence of the defendants and of the purpose of their visit, and did not object, and the Court held that in so far as he represented the prosecutors, he might be said to have consented to, if he did not approve of all that was said and done. The conclusion reached was that the defendants had not done any act contrary to law, that no *prima facia* case of unlawful combination or criminal conspiracy was disclosed by the testimony, and they were therefore discharged."

State v.  
Glidden.

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*...but i*  
When combinations become criminal.

In Connecticut, an Act was passed in 1878, which provided that "Every person who shall threaten or use any means to intimidate any person to compel such person against his will to do or refrain from doing any act which such person has a legal right to do, or shall persistently follow such person in a disorderly manner, or injure or threaten to injure his property with intent to intimidate him," shall on conviction be liable to fine and imprisonment. In the very recent case of State v. Glidden,<sup>1</sup> the Supreme Court declared that this Act was designed to protect all persons, natural or artificial, employers or employés, in the management and control of their own business, and held that the acts of the defendants in threatening and using means (the boycott) to intimidate a publishing company to compel it, against its will, to discharge the workmen of its choice, and employ in their places those named by the defendants were clearly prohibited by the statute. After holding that the *purpose* of the defendants was to deprive the company of its liberty to carry on its business in its own way, although in doing so it interfered with no rights of the defendants; that the *motive* was to gain an unjust advantage at the expense of others, and was therefore legally corrupt; that the *intention* was to harm the company, and was therefore malicious, the court uses the following language, which must be considered as touching high water mark upon conspiracies of this class: "If in any case it is criminal for many to combine to do what any one may lawfully do singly, it would seem that this would be such a case. Numbers can accomplish what one man cannot, evil as well as good, and that is the reason of the combination. The law encourages combinations for good, and combinations by workmen to better their condition by legitimate and fair means are commendable and should be encouraged. But combinations for evil purposes, whether by one class of men or another are detrimental to the public weal and cannot be regarded with favor by the courts. But combinations for good purposes may be perverted and when their power is sought to be used to harm their fellowmen, to deprive others of their just rights then, not the combination, but the use of it, becomes criminal. In such use there is a large element of wantonness and malice. Any one man, or any one of several men, acting independently is powerless, but when several combine and direct their united

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<sup>1</sup> State v. Glidden, 3 New Eng. Rep., 849. March, 1887.  
(4854)

energies to the accomplishment of a bad purpose, the combination is formidable, its power for evil increasing as its numbers increase. No one man can drive these workmen from their situations. Numbers, if allowed their will, may do it. The intention by one man, so long as he does nothing, is not a crime which the law will take cognisance of, and so, too, of any number of men acting separately. But when several men form the intent and come together and agree to to carry it into execution, the case is changed. The agreement is a step in the direction of accomplishing the purpose. The combination becomes dangerous and subversive of the rights of others, and the law wisely says it is a crime. It is no answer to say that the conspiracy was for a lawful purpose, to better their own condition, to fix and advance their rate of wages, and further their own material interest. It is certainly true that they had a right to have such a purpose, and to use all lawful means to carry it into effect, and so a purpose to acquire property is lawful so far as it contemplates lawful means only. But if it contemplates the acquisition of money by means of murder, theft, fraud or injustice, the end does not justify the means. Neither will these defendants be permitted to advance their material interests or otherwise better their condition by any such reprehensible means. They had a right to request the Carrington Publishing Company to discharge its workmen and employ themselves, and to use all proper argument in support of their request. But they had not the right to say, you shall do this or we will ruin your business, much less had they a right to proceed to ruin its business. In such a case the direct and primary object must be regarded as the destruction of the business. The fact that it is designed as a means to an end, and that end in itself considered a lawful one, does not divest the transaction of its criminality." One of the most interesting features of the case is that the conspiracy contemplated *boycotting* as a means to the end sought. Threats were made to withdraw the patronage of the defendants and their associates, and to stop and divert the patronage of others. Notices and circulars were dropped upon the street, headed as follows :

A Word to the Wise is Sufficient.

Boycott the Journal and Courier.

The Court, in considering the meaning of the word "boycott," said:

"That word is not easily defined. It is frequently

(4855)

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State v. Glidden, boycott.

*Boycott.* spoken of as passive merely, a let-alone policy, a withdrawal of all business relations, intercourse and fellowship. If that is its only meaning it will be difficult to find anything in it criminal. We may gather some idea of its real meaning, however, by a reference to the circumstances in which the word originated.

*Definition.* A quotation is then made from McCarthy's "England under Gladstone,"<sup>1</sup> and the Court continues:

<sup>1</sup> Those circumstances are thus narrated by Mr. Justin H. McCarthy, an Irish gentleman of learning and ability, who will be recognised as good authority. In his work entitled "England Under Gladstone," he says: "The strike was supported by a form of action or rather inaction which soon became historical. Captain Boycott was an Englishman, an agent of Lord Earne and a farmer of Lough Mask, in the wild and beautiful district of Connemara. In his capacity as agent he had served notices upon Lord Earne's tenants, and the tenantry suddenly retaliated in a most unexpected way by—in the language of schools and society—sending Captain Boycott to Coventry in a very thorough manner. The population of the region for miles around resolved not to have anything to do with him, and as far as they could prevent it, not to allow any one else to have anything to do with him. His life appeared to be in danger; he had to claim police protection. His servants fled from him as servants flee from their masters in some plague-stricken Italian city. The awful sentence of excommunication could hardly have rendered him more helplessly alone for a time. No one would work for him; no one would supply him with food. He and his wife had to work in their own fields themselves, in most unpleasant imitation of Theocritan shepherds and shepherdesses, and play out their grim eclogue in their deserted fields, with the shadows of the armed constabulary ever at their heels. The Orangemen of the north heard of Captain Boycott and his sufferings and the way in which he was holding his ground, and they organized assistance and sent him down armed laborers from Ulster. To prevent civil war, the authorities had to send a force of soldiers and police to Lough Mask, and Captain Boycott's harvests were brought in and his potatoes dug by the armed Ulster laborers guarded always by the little army."

Upon the meaning of the word *boycott*, see a valuable article on Strikes and Boycotts as indictable at Common Law, in Jan. & Feb. Amer. Law Review for 1887, also a note to Smith v. People, 76 Amer., Dec. 783. An article in the Central Law Journal, Vol. XXII., p. 307. The Boycott and its Methods, Cr. L. Mag. & Rep., Vol. IX., p. 1. Mogul Steamship Co. v. McGregor, L. R., 15 Q. B., 476, which was an action for damages, and an application for an interim injunction. The case was one of conspiracy to injure the plaintiffs by inducing shippers to refrain from patronizing them in their business as common carriers. L. Ch. J. Coleridge said: "This was an application \* \* \* to restrain defendants from doing that which was called throughout the case—and which I see really no reason for hesitating to call *boycotting* the plaintiffs." The term is also used in Regina v. Parnell, 14 Cox., Crim. Law cases, 508, which was the case of a conspiracy to impoverish and injure the owners of farms in Ireland by soliciting large numbers of tenants not to pay rent. On the Pacific coast the word boycott generally means a demand by some labor

"If this is a correct picture, the thing we call a boycott, originally signified violence if not murder. If the defendants in their hand bills and circulars used the

union or persons employing Chinese laborers to discharge them, and employ white laborers in their places. See *In re Baldwin*, on Habeas Corpus, 27 Fed. Rep., 187. A conspiracy to deprive the Chinese of the rights secured to them by the treaty with China by *Boycotting* them. See, also, *The Legal Aspect of the Boycott*, *Chicago Law Times*, Nov., 1886, p. 38.

Judge Pickett's definition, in *State v. Glidden*, was as follows: "The term 'boycott,' " he says, "is comparatively new; better understood in this country by operation than by description, and, so far as is known to the court, is described and defined in permanent literature only in the Encyclopædic Dictionary, an English philological authority, the principal definition being as follows, to-wit: 'To put a person outside of the pale of society, high or low, amid which he lives, and on which he depends; to socially outlaw him, to have no dealings of any kind with him.' In this country, it is within common knowledge, that the term is a compendious name used to describe a series of acts not in the line of lawful competition, commenced and continued by all persons who can be persuaded to join in them, to hinder and prevent the proper pursuit of a lawful occupation or business, with intent to injure the corporation, firm or individual, against whom the 'boycott' is directed."

In the recent Anarchist cases at Milwaukee, Wis., Judge Sloane is reported to have said: "Laborers or capitalists may organize for their own protection, but have no right to take the aggressive. In our social and industrial life, and in our government, the socialist, and the anarchist and the boycott have no place." In the Theiss Boycott cases, Judge Barrett, said: "You have violated public right and opinion. Your offence is not short of blackmail. The distribution of circulars by you in places of business is conspiracy and punishable as such. Your conduct if unpunished would lead to savagery." A recent writer in the *Chicago Law Times* for Nov., 1886, says: "The evil of the boycott lies in the combination and confederacy of individuals to prevent and hinder by acts of blackmail, conspiracy, intimidation, or by a series of such acts, the proper pursuit of a lawful occupation or business, having for its end and purpose the injury, or the destruction, of those who do not obey the dictates and commands of the organization directing the boycott. The source of the evil is in the means employed; the end of the evil is in the proposed and intentional wrong and injury sought to be accomplished."

See, also, *The Criminality of Boycotting*, *Virginia Law Journal*, 1886, Vol. X, p. 707; *Regina v. Barrett*, 8 Crim Law. Mag., 574 (1886); *Reg. v. Hibbert*, 13 Cox Cr. C. 82 (1875); S. C., 13 Eng. Rep., Moak's notes, 433, in which *Picketing*, that is, the watching and speaking to the workmen as they come and go from their employment, to induce them to leave their service, was held not to be unlawful under 34 & 35 Vict., c. 32 (Act of 1871), unless carried to the extent of intimidation, molestation and obstruction. To the same effect are *Reg. v. Shepherd*, 11 Cox Cr. c. 325, *Reg. v. Driftt*, 10 Cox Cr. Cas. 592.

See, also, *Conspiracies to Control Wages or Workmen; Note to People v. Fisher*, 28 Amer., Dec. 507. *Boycotting*, 35 *Albany Law Journal*, 208 and 224.

*Evil consequences of the boycott*

word in its original sense, in its application to the Carrington Publishing Company there can be no doubt of their criminal intent. We prefer, however, to believe that they used it in a modified sense. As an importation from a foreign country we may presume that they intended it in a milder sense—in a sense adapted to the laws, institutions, and temper of our people. In that sense it may not have been criminal. But even here, if it means, as some high in the confidence of the trades union assert, absolute ruin to the business of the person boycotted, unless he yields, then it is criminal. Instances are not wanting in our own country where the boycott has been attended with more or less violence, and it cannot be denied that the natural tendency is, especially when applied by the ignorant and vicious, to attempt to make it successful by force. It too often leads to serious disturbances of the peace and even murder. We are loth, however, to assume that these defendants intended any such consequences. Nevertheless it is a dangerous instrumentality to use, and if those instigating and resorting to it do not of their own accord take notice of its peril and voluntarily abandon its use, as we sincerely hope they will, the court at no distant day will be called upon to recognize its dangerous tendency and treat it accordingly. From these considerations it is apparent that the purpose of this conspiracy, or the means by which it was to be accomplished, or both, were not only unlawful, but as some authorities express it, "were in some degree criminal."

Another recent Connecticut case is that of *State v. Opdyke, et al.*<sup>1</sup> which arose in the City Court of New Haven. The facts were these: The complainant had been employed, for two years, in the freight yard of the New Haven and North Hampton Railroad Company. He voluntarily left his employment, in a proper manner, but without the approval of Opdyke, one of the defendants, who was the superintendent of the company. He obtained employment in the same line of business in the freight yard of the New York New Haven and Hartford Railroad Company, and after working for a few days, was ordered to stop work by Wallace, another of the defendants, and assistant superintendent of the last named company, not because he was unsatisfactory as a workman, but solely because there was a mutual agreement between the defendants that a man not approved by one should not be employed by their respec-

<sup>1</sup> *State v. Opdyke.* Not reported. For this case I am indebted to Prof. Johnson T. Platt of New Haven.

tive companies, so far as they had control. It appeared that Opdyke had communicated to Wallace that the complainant had left his former employment in what he considered "a mean way." Judge Pickett held that the defendants had a common design to hinder the complainant from doing his work, and earning his pay; not for good reasons connected with his immediate employment, but for reasons originating "from excessive courtesy" between them, and which would not have been put into operation except for said mutual understanding, which was to all intents and purposes a "boycott" upon the individual who was the subject of the conspiracy.<sup>1</sup>

The Court said: "It is well settled law, that any conspiracy to injure a man in his person or character is highly criminal at Common Law, and although recent events have developed conspiracies in new forms for new purposes bearing upon the varied business interests of this and other States, the Court is clearly of the opinion that such conspiracies designed to directly prevent the carrying on of any lawful business or in- Conspiracies against labor or business.

directly to injure the business of any dealer in, or producer of goods, wares, and merchandise, by preventing those who would be customers for such goods, wares, and merchandise from purchasing the same, by intimidation, persuasion, or any means, other than by lawful competition, is also criminal at Common Law.

"The Court is equally satisfied that any conspiracy to prevent, obstruct, or hinder any man from putting his labor on the market when, where, and for such compensation as he may agree for, if the same be lawful, is also highly criminal at Common Law and more disastrous in effect than any other form of conspiracy except that to take life.

"By law every man's labor, skill, and industry are his own property, and with a great majority of men, they are his all, and precious to him next to his life. They stand in place of property, real and personal. His manhood, as well as the prosperity and comfort of him and his, are dependent upon his right to exercise these powers, gifts, and qualities, with the same freedom with which more fortunate men bestow their goods and estates, and any prevention, restriction or

<sup>1</sup> In Payne v. Western R. R. Co., 13 Lea, Tenn., 507; it was held not unlawful for a railroad company to discharge, nor to publish notices that it will discharge its employés for trading with a certain merchant, unless thereby a contract is broken between the company and its employés, and even then no action accrues, unless the notice be libellous.

hindrance in his lawful exercise of such freedom, by the common design and united action of any organized society, order or club, or by any organized combination of two or more persons, whether they are employés seeking self-protection, or employers intending to be courteous to each other, is in violation of rights established by the Constitution and laws of the State.

"With this view of the law in the case, the Court finds the complaint charged the accused in a proper manner with the offence named."

Result of the cases.

The result of all the cases, ignoring matters of detail or special circumstances, appears to be as follows: Workmen may combine lawfully for their own protection and common benefit; for the advancement of their own interests, for the development of skill in their trade, or to prevent overcrowding therein, or to encourage those belonging to their trade to enter their guild; for the purpose of raising their wages, or to secure a benefit which they can claim by law. The moment, however, that they proceed by threats, intimidation, violence, obstruction, or molestation, in order to secure their ends; or where their object be to impoverish third persons, or to extort money from their employers, or to ruin their business, or to encourage strikes or breaches of contract among others, or to restrict the freedom of others for the purpose of compelling employers to conform to their views, or to attempt to enforce rules upon those not members of their association, they render themselves liable to indictment. "The rights of work men are conceded, but the exercise of free-will and freedom of action within the limits of the law is also secured equally to the masters."<sup>1</sup>

Civil Remedies.

Civil remedies have been enforced also, both at law and in equity, for injuries resulting from conspiracies belonging to the class reviewed.<sup>2</sup>

<sup>1</sup> Per East, J., in *Regina v. Rowlands*, 17 A. & E. (N. S.), 671. See, also, Greenhood on Public Policy, 648, et seq. Those who desire to pursue the question further will find instruction and profit in "The Law of Trade Unions," by William Erle. "Labour Laws," by James Edward Davis, published in 1875, by Butterworth, London; containing the Acts, and portions of the "Report of the Royal Commissioners on Labour Laws." Also, a Chapter on Strikes, and a valuable note in Roscher's Political Economy. Labor's Edition, Vol. II, pp. 845—85. Also, a paper on Political Economy and Criminal Law, by Wharton, in the Criminal Law Magazine for January, 1882.

<sup>2</sup> In *Snow v. Wheeler*, 113 Mass., 186, A. D. 1873, a bill was sustained in behalf of a lodge to compel the defendants to draw an order on the defendant bank to enable the plaintiff to withdraw a deposit made by the defendants as trustees for the lodge. It was held that it is not illegal for workmen to form and act as

**E. CONSPIRACIES AGAINST THE INTERESTS OF TRADE AND COMMERCE, AND AGAINST PUBLIC POLICY.**

When the subject matter of a conspiracy or the act to be done has a necessary tendency to prejudice the public, or to oppress individuals by unjustly subjecting them to the power of the confederates, the combina-

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an association for the purpose of protecting themselves against the encroachments of their employers, and to agree in furtherance of said object not to teach others their trade unless by consent of the society. So tort will lie for molestation of business or enticing workmen to quit their employment. Carew v. Ruth-erford, 106 Mass., 1; Walker v. Cornin, 107 Mass., 555; Bixby v. Dunlap, 56 N. H., 456; Haskins v. Royster, 70 N. C., 601; Dickson v. Dickson, 33 La. Ann., 1261; Jones *et al.* v. Blocker, 43 Ga., 331; Buffalo Lubricating Oil Co. v. Everest, 30 Hun.(N. Y.), 586; Johnston Harvester Co. v. Meinhardt, 9 Abbott's N. C., 393; S. C. 60 How. Prac. Rep. (N. Y.), 168; Baughman v. Richmond Typographical Union, XI Va. Law. Journal, 196, (Apl. 1887); Payne v. R. R. Co., 13 Lea, 507; Mapstrick v. Ramge, 9 Neb., 390. So combinations injurious to trade may be restrained. Hooker & Woodward v. Vandewater, 4 Denio, 349; Stanton v. Allen, 5 Denio N. Y.), 434; Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. St., 173; Contra, Munhall v. Penna. R. R. Co. 92 Pa. St., 150. So in the U. S. Circuit Court for the District of Ohio, Judge Walker granted an injunction against strikers, and Judge Stone of the Common Pleas of Cleveland did the same. In passing upon the motion to dissolve the Judge said: "The old notion of not interfering with a person until he has actually committed a wrong is erroneous. The men were essentially trespassers when they went upon the property of the railway company after they had left its employ by reason of a strike. They had no right to go there in numbers, and by methods of intimidation, which such numbers readily suggest, prevent other men from going to work. The question of conspiracy is to be decided by the acts of the parties at their meetings, or any one of them after they had united in a common purpose for securing their demands. The sending of the committee to the yardmaster asking him not to move trains showed a common purpose. You might meet a man on a unfrequented road and politely request him to give you his money. It would not be a manner of securing a loan; it would be robbery. The telegrams between the strikers at Cleveland and Youngstown show the same unlawful conspiracy. The acts and speeches of the strikers showed the same condition. Actual violence or destruction of property had not been employed, but intimidation certainly. The Constitution allows men to assemble for a lawful purpose, to discuss questions for any lawful purpose; but can a man or a body of men go upon the property of another and seek to induce the employees to cease work? I think not. It is a conspiracy and unlawful. The very show of numbers, unaccompanied with actual or threatened violence, is intimidation. The remedy by action for trespass is not sufficient in a case involving a continuous series of acts in pursuance of a plan." The New York, Lake Erie and Western R. R. Co. v. Wenger, The Weekly Law Bulletin and Ohio Law Journal, Vol. xvii, p. 306.

Conspiracies to regulate supply and price of coal are criminal.

Unlawful to stimulate price of oil by dishonest devices.

Or to corner the lard market.

tion is criminal.<sup>1</sup> As illustrations of this principle the following cases may be referred to. It has been held that a combination among five large coal companies, to regulate the production, and to control the supply and price of coal, is an unlawful conspiracy under the statute making it a misdemeanor for persons to "conspire to commit any act injurious to trade or commerce;"<sup>2</sup> although a business arrangement between two transportation companies to carry merchandise at an agreed rate does not amount to an actionable conspiracy, though to the injury of a competing line.<sup>3</sup>

For the same reasons, it has been held to be criminal for merchants to combine to influence, by dishonest and fraudulent devices, the price of a marketable commodity such as oil;<sup>4</sup> to increase or depress the price of labor or of anything, bought, sold or bartered;<sup>5</sup> to make real sales and pretended purchases of stock, in order to induce brokers to advance large sums on such purchases;<sup>6</sup> and to corner the lard market.<sup>7</sup> In the case of Keene *v.* Poole, Kent & Co., the former formed a pool to advance the price of lard by "cornering" the supply of that article, and then brought suit against the brokers on the ground that they had not fairly shared the profits of the operation. In delivering the opinion of the Supreme Court of New York, Judge Daniels said "the law will not permit parties owning property, and contemplating the purchase and sale of more of it, to combine together to keep it off the market, and in that manner oblige the public to pay a larger price for the article than it would otherwise secure. Such a combination is an unlawful conspiracy punishable as a crime. When it may be successfully carried out, its effect is to impose upon the public, and oblige individuals having occasion to purchase the article dealt in to pay more for it than its market value. So far as such a combination or scheme may be rendered successful, it is little, if anything, less than respectable robbery, which the law will not permit or sustain. If persons devise or enter into schemes or conspiracies of this character they must depend for their remedy upon

<sup>1</sup> Comm. *v.* Carlisle, Brightly's Rep. (Pa.), 36; Comm. *v.* Ridgway, 2 Ashm. (Pa.), 247.

<sup>2</sup> Morris Run Coal Co. *v.* Barclay Coal Co., 68 Penna St., 173.

<sup>3</sup> Munhall *v.* The Penna. R. R. Co., 92 Pa., 150.

<sup>4</sup> Comm. *v.* Tack, 1 Brewster (Pa.), 511.

<sup>5</sup> Comm. *v.* Haines, 15 Philada. Rep., 363; Huntzinger *v.* Comm., 10 Weekly Notes of Cases (Pa.), 98.

<sup>6</sup> Comm. *v.* Supt. of County Prison, 6 Philada., 169.

<sup>7</sup> Keene *v.* Poole, Kent & Co., S. C. of N. Y., not yet reported.

the application of the rule, which may be observed by other confederates, requiring that there shall be honor among certain classes of persons who violate the laws of the state."

It is criminal to conspire to manufacture a spurious article, and sell it as genuine.<sup>1</sup> To manufacture a spurious article to be sold as genuine.

Contracts in restraint of trade are void, as conspiracies against the public interest.<sup>2</sup>

So also is it against public policy to permit a conspiracy to entice a citizen within the jurisdiction of a court;<sup>3</sup> or to induce others to violate a penal statute;<sup>4</sup> or to induce a tavern keeper to violate the Sunday liquor-law.<sup>5</sup> Contracts in restraint of trade. To decoy into jurisdiction.

Upon the same ground of opposition to the interests of the public rest the cases reviewed in the previous section relating to strikes and boycotts, where all conspiracies are held to be criminal to compel another to employ a particular class, or at a particular rate, and to drive away all others;<sup>6</sup> but a mere combination not to work, except at certain prices is not indictable, so long as there is no attempt to coerce others or to damage their business.<sup>7</sup>

So also a conspiracy to destroy the property of a railroad corporation.<sup>8</sup> To destroy property of R. R. corporation.

#### F. CONSPIRACIES AGAINST GOVERNMENT.

To this class belong conspiracies to commit treason;<sup>9</sup> to defraud a municipality;<sup>10</sup> to defraud the postal service of the United States;<sup>11</sup> to interfere with the enjoy-

Against government revenue, civil rights and elections.

<sup>1</sup> Comm. v. Judd, 2 Mass., 329.

<sup>2</sup> Hooker v. Vandewater, 4 Denio, 349; Stanton v. Allen, 5 Denio, 434; Bloss v. Bloomer, 23 Barb. (N. Y.), 604.

<sup>3</sup> Phelps v. Goddard, 1 Tyler (Vt.), 60; Cook v. Brown, 125 Mass., 503.

<sup>4</sup> Hazen v. Comm., 23 Pa. St., 355; State v. Potter, 28 Iowa, 554.

<sup>5</sup> Comm. v. Leeds, 9 Philad., 569. But see Comm. v. Kostenbader, S. C. Penna., 1 Mech., '86. The defendants were indicted for conspiracy to induce liquor dealers to violate the Sunday law by selling liquor to them on Sunday, in order to secure the share of the penalty due to informers. The court below quashed the indictment. Affirmed by a divided court.

<sup>6</sup> See section D, ante, but particularly Curren v. Comm., 3 Pitts (Pa.), 143.

<sup>7</sup> Comm. v. Denny, Lewis Cr. L., 625.

<sup>8</sup> State v. Abel F. Fitch, *et al.*, Detroit, Mich., 1851, a scarce pamphlet.

<sup>9</sup> Comm. v. Blackburn, 1 Duval (Ky.), 4.

<sup>10</sup> People v. Tweed, 5 Hun. (N. Y.), 353; Ibid v. Ibid, 11 Hun.; Comm. v. Haines, 15 Philada., 313.

<sup>11</sup> The Star Route cases, Washington, 1882.

ment of civil rights;<sup>1</sup> to obstruct an officer in the performance of official duty—the service of a writ, or the collection of revenue;<sup>2</sup> the destruction of papers relating to goods liable to duty;<sup>3</sup> frauds upon the revenue laws;<sup>4</sup> conspiracies to plunder a wreck within the admiralty and maritime jurisdiction of the United States;<sup>5</sup> to cheat the Cherokee Nation;<sup>6</sup> conspiracies of public officers to cheat the state;<sup>7</sup> to intimidate settlers upon public lands;<sup>8</sup> and all offences against the purity of elections.<sup>9</sup>

#### G. CONSPIRACIES AGAINST PUBLIC JUSTICE.

To suppress  
or manufac-  
ture evidence

To obstruct  
officers, &c.

To injure ad-  
ministration  
of justice.

Every conspiracy against the administration of justice is criminal, whether it involve the suppression, destruction, or fabrication of evidence, interference with the rights of a defendant on trial, molestation of an officer in the performance of his duty, or the obtaining of process for an improper purpose.

Instances of this class are as follows:

A conspiracy to defraud devisees by the destruction of a will.<sup>10</sup>

To pervert legal process to the unlawful purpose of extorting a deed.<sup>11</sup>

To impede an officer in the execution of his official duty.<sup>12</sup>

Between a client and attorney to resist an officer.<sup>13</sup>

To obtain process for an improper purpose.<sup>14</sup>

To injure the administration of justice.<sup>15</sup>

<sup>1</sup> The Ku Klux cases, U. S. v. Mitchell, 1 Hughes, 439; U. S. v. Crosby, Ibid, 448; U. S. v. Butler, Ibid, 458.

<sup>2</sup> The Mussel Slough case, 5 Fed. Rep., 680; U. S. v. Johnson, 26 Fed. Rep.; U. S. v. McDonald, 8 Biss, 439.

<sup>3</sup> U. S. v. De Grieff, 16 Blatchf, 20; U. S. v. Graff, 14 Blatchf, 380.

<sup>4</sup> U. S. v. Nunnemacher, 7 Biss, 111; U. S. v. Goldberg, Ibid, 175; U. S. v. Boyden, 1 Lowell, 266; U. S. v. Sacia, 2 Fed. Rep., 754; U. S. v. Frisbie, 28 Fed. Rep., 808; U. S. v. Gordon, 22 Fed. Rep., 250.

<sup>5</sup> U. S. v. Sanche, 7 Fed. Rep., 715.

<sup>6</sup> In re Wolf, 27 Fed. Rep., 606.

<sup>7</sup> State v. Cardoza, 11 S. C., 196.

<sup>8</sup> U. S. v. Waddell, 5 Sup. Ct. Rep., 35.

<sup>9</sup> U. S. v. Watson, 17 Fed. Rep., 145; Comm. v. McHale, 38 Leg. Int., 341.

<sup>10</sup> State v. DeWitt, 2 Hill, S. C., 183.

<sup>11</sup> State v. Shooter, 8 Richardson, S. C., 72.

<sup>12</sup> State v. Noyes, 25 Vt., 415; State v. Ripley, 31 Maine, 386; Cole v. People, 84 Ill., 216.

<sup>13</sup> U. S. v. Smith, 1 Dillon, Ark., 212.

<sup>14</sup> Slomer v. People, 25 Ill., 70.

<sup>15</sup> State v. Harris, 38 Iowa, 242.

- To beat a justice of the peace.<sup>1</sup>
- To bribe a school trustee.<sup>2</sup>
- To corruptly appoint to office.<sup>3</sup>
- To defeat the operation of a statute.<sup>4</sup>
- To violate the election laws.<sup>5</sup>
- To commit prison breach.<sup>6</sup>
- To procure the judgment of a court by corruption.<sup>7</sup>

To bribe.

#### H. CONSPIRACIES AGAINST THE PERSONS, RIGHTS OR PROPERTY OF INDIVIDUALS.

All conspiracies which involve a breach of the public peace, which assail public purity or undermine private virtue are criminal. The same may be predicated of conspiracies against the rights, persons, or property of individuals.

The following are examples:

- To commit an assault and battery.<sup>8</sup>
- To take away the wife and chattels of another.<sup>9</sup>
- To produce miscarriage.<sup>10</sup>
- To tar and feather.<sup>11</sup>
- To put a person in an insane asylum.<sup>12</sup>
- To inveigle a minor into matrimony.<sup>13</sup>
- To seduce and abduct a female.<sup>14</sup>
- To abduct a child.<sup>15</sup>
- To prosecute a person.<sup>16</sup>
- To conspire to convict an innocent man, before a court martial, even though the court martial find the party guilty of the offence charged.<sup>17</sup>

To commit violence on person.

To abduct.

To falsely prosecute.

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<sup>1</sup> State *v.* Bartlett, 30 Maine, 132.  
<sup>2</sup> Shircliff *v.* State, 96 Ind., 369.

<sup>3</sup> Comm. *v.* Callaghan, 2 Va., Cas. 460.<sup>4</sup> Hazen *v.* Comm., 11 Harris, Pa., 355.<sup>5</sup> Comm. *v.* McHale, 38 Leg. Int., 341.<sup>6</sup> State *v.* Murray, 15 Maine, 100.<sup>7</sup> Comm. *v.* McLean, 2 Pars., Pa., 367.<sup>8</sup> Comm. *v.* Putnam, 29 Pa. St., 296.<sup>9</sup> State *v.* Earwood, 75 N. C., 210; Beecher *v.* Webb, 113 Ill., 436.<sup>10</sup> Solander *v.* People, 2 Colorado, 48.<sup>11</sup> State *v.* Pulle, 12 Minn., 164; State *v.* Ormiston, 66 Iowa, 143.<sup>12</sup> Mintzer *v.* Sheriff, 1 Camp., Leg. Gaz. Rep., Pa., 340; Comm. *v.* Sheriff, 8 Phila., 645; Hinchman *v.* Richie, Brightly's Rep., Pa., 143.<sup>13</sup> Resp. *v.* Hevice, 2 Yeates, Pa., 114; Comm. *v.* Mifflin, 5 W. & S., Pa., 461.<sup>14</sup> Anderson *v.* Comm., 5 Randolph, Va., 329; State *v.* Murphy, 6 Ala.; Smith *v.* People, 25 Ill., 17.<sup>15</sup> Comm. *v.* Westervelt, 11 Phila. Rep., 461.<sup>16</sup> State *v.* Walker, 32 Maine, 195.<sup>17</sup> Comm. *v.* McLean, 2 Pars., Pa., 367.

To charge with crime.	To procure the arrest of a person. <sup>1</sup> To charge one with crime, with a view to extortion. <sup>2</sup> To commence suits against one with a view to extor- tion. <sup>3</sup>
To cheat.	To charge a married woman with adultery. <sup>4</sup> To injure the character by procuring a decree of divorce on the ground of adultery. <sup>5</sup> To slander a person. <sup>6</sup> To injure the property of another. <sup>7</sup> To kill the cattle of another. <sup>8</sup> To cheat citizens out of their land entries. <sup>9</sup> To cheat one out of goods. <sup>10</sup>
To ruin rep- utation.	To cheat creditors. <sup>11</sup> To cheat a partner. <sup>12</sup> To cheat an individual. <sup>13</sup> To make drunk and cheat at cards. <sup>14</sup> To ruin a person in his profession. <sup>15</sup> To induce persons to do an act prohibited by penal statute. <sup>16</sup> To induce a person to sign a bank check, and then take it by force. <sup>17</sup> To entice a person within the jurisdiction. <sup>18</sup>

#### I. MISCELLANEOUS CASES OF CONSPIRACY.

Miscella- neous cases.	To sell lottery tickets in a lottery not authorized by law. <sup>19</sup> To prevent the use of the English language in the service of a church. <sup>20</sup>
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<sup>1</sup> Elkin *v.* People, 28 N. Y., 177.

<sup>2</sup> Johnson *v.* State, 2 Dutcher, 313; State *v.* Cawood, 2 Stew. (Ala.), 360; Comm. *v.* Tibbitts, 2 Mass., 356; State *v.* Hick-  
ling, 12 Vroom, 208; State *v.* Jackson, 82 N. C., 565.

<sup>3</sup> Leggett *v.* Postley, 2 Paige, 599.

<sup>4</sup> State *v.* Burlington, 15 Maine, 104.

<sup>5</sup> State *v.* Stevens, 30 Iowa, 391.

<sup>6</sup> State *v.* Hickling, 12 Vroom, 208.

<sup>7</sup> State *v.* Flynn, 28 Iowa, 26.

<sup>8</sup> Lowrey *v.* State, 30 Texas, 402.

<sup>9</sup> State *v.* Trammell, 2 Ired. (N. C.), 379; Tompkins *v.* State,  
17 Ga., 356.

<sup>10</sup> Comm. *v.* Ward, 1 Mass., 213.

<sup>11</sup> State *v.* Simons, 4 Strohbarth (S. C.), 266; Comm. *v.* Gal-  
lagher, 2 Clark (Pa.), 297.

<sup>12</sup> State *v.* Cole, 10 Vroom, 324.

<sup>13</sup> State *v.* Jackson, 7 S. C., 283.

<sup>14</sup> State *v.* Younger, 1 Dev. (N. C.), 357.

<sup>15</sup> Wildee *v.* McKee, 111 Pa. St., 335.

<sup>16</sup> Hazen *v.* Comm., 23 Pa. St., 355.

<sup>17</sup> People *v.* Richards, 67 Cal., 412.

<sup>18</sup> Phelps *v.* Goddard, 1 Tyl. (Vt.), 60.

<sup>19</sup> Com. *v.* Gillespie, 7 S. & R., 469.

<sup>20</sup> Com. *v.* Eberle, 3 S. & R., 9.

To lay out townships under usurped powers.<sup>1</sup>

To conspire with the keepers of sailors' boarding houses not to ship seamen at the offices of certain notaries.<sup>2</sup>

To commit a trespass.<sup>3</sup>

To obtain a horse (a mere trespass).<sup>4</sup>

To decoy one into the jurisdiction.<sup>5</sup>

To induce a man to violate the Sunday law.<sup>6</sup>

To defeat the enforcement of the prohibitory liquor laws.<sup>7</sup>

To commit a prison breach.<sup>8</sup>

<sup>1</sup> Com. *v.* Franklin, 4 Dallas, 255.

<sup>2</sup> Emanuel's Case, 6 City Hall Rec., 33.

<sup>3</sup> State *v.* Straw, 42 N. H., 393.

<sup>4</sup> State *v.* Clary, 64 Maine, 389.

<sup>5</sup> Phelps *v.* Goddard, 1 Tyler (Vt.), 60.; Cook *v.* Brown, 125 Mass., 503.

<sup>6</sup> Comm. *v.* Leeds, 9 Phila., 569. But see Comm. *v.* Kostenbader, S. C., of Penna., Mch 1, 1886; People *v.* Saunders, 25 Mich., 119.

<sup>7</sup> State *v.* Potter, 28 Iowa, 554.

<sup>8</sup> State *v.* Murray, 15 Maine, 100.

## CHAPTER IV.

## THE REQUISITES OF INDICTMENTS.

Ancient remedies. For the earliest cases of conspiracy—those to indict a man for a crime—the old modes of proceeding were two-fold, by indictment, and by writ of conspiracy, which was the civil mode of obtaining pecuniary redress.<sup>1</sup> In order to support the latter, it was necessary to show an actual injury as a basis of a claim for damages, and also to prove that the party had been lawfully acquitted. There were many cases, therefore, to which a civil remedy could not be applied.<sup>2</sup> The ancient writ of conspiracy has given way to an action on the case for a malicious prosecution, or for slander, by which redress may be obtained for any kind of injury to either person or character; and it would seem—from a review of the authorities—that an action on the case will lie whenever the plaintiff is aggrieved or damaged by unlawful acts, done by the defendants, in pursuance of a combination and conspiracy for that purpose.<sup>3</sup>

Action on the case.

An injunction to restrain repeated acts of trespass by conspirators, or for molestation of business, or a bill to compel the proper use of moneys, may be resorted to in proper cases. See note to section on Strikes—ante pp. 178–9.

The usual remedy is by indictment.

Ancient precedents of indictments. The ancient precedents relate principally to false accusations of crime, with a view to extortion, to cheats, to

<sup>1</sup> Chitty's Cr. Law, 3 Vol. \*1142; 3 Inst., 143; 1 Saund. 2, 30, N. 1.

<sup>2</sup> Hawkins, B. 1, c. 72, S. 2.

<sup>3</sup> Mott v. Danforth, 6 Watts (Pa.), 306; Griffith v. Ogle, 1 Binney (Pa.), 174; Glass *et al.* v. Stewart, 10 S. & R. (Pa.), 222; Gaunce v. Backhouse, 37 Pa. St., 350; Newhall v. Jenkins, 26 Pa. St., 159; Hinchman v. Richie, Brightly's Rep., 159; Tams v. Lewis, 42 Pa. St., 402; Benford & Sanner, 40 Pa. St., 9; Burton v. Fulton, 49 Pa. St. 151; Kimmel v. Geeting, 2 Grant (Pa.), 125; Johnston v. Givan, 14 W. N. C. (Pa.), 326; McCabe v. Burns, 66 Pa. St., 356; Kirtley v. Deck, 2 Munf. (Va.), 10; Herron v. Hughes, 25 Cal., 555; Mapstrick v. Ramage, 9 Neb., 390; Powell v. Cooper, 5 Hun. (N. Y.), 169; Bruce v. Kelly, *Ibid.*, 229; Kimball v. Hower, 34 Md., 407; Spaulding v. Knight, 116 Mass., 148; Yngnanzo v. Sohman, 3 Daly (N. Y.), 153; Dickson v. Dickson, 33 La. Ann., 1261; Wright v. Bourdon, 50 Vt., 494; State v. Clary, 64 Me., 369; Knowles v. Peck, 42 Conn., 386; Place v. Minster, 65 N. Y., 89.

conspiracies against the administration of justice, such as prison breach, the rescue of a prisoner, the suppression of evidence, or combinations to commit felonies, to raise the price of funds, or in relation to the rate of wages. Of these many forms are given in Wentworth and Chitty,<sup>1</sup> and these are substantially approved of by Archbold.<sup>2</sup> The technical words appropriate to the description of the offence are "unlawfully and wickedly" (or, as the case may be, "falsely and maliciously")<sup>3</sup> Appropriate words. "did conspire, combine, confederate and agree together;" but others of the same import are equally proper. It has been held sufficient to state the conspiring alone,<sup>4</sup> although it is usual, after stating the conspiracy, to show that in pursuance of it certain overt acts were done. Where the act is in itself illegal, there is no occasion to state the means by which the conspiracy was effected.<sup>5</sup> But where the act becomes illegal only from the means used to effect it, so much must be stated as will show its illegality and charge the defendants with a substantial offence.<sup>6</sup> What must be set forth.

The venue must be laid where the conspiracy is entered into, and not where it takes effect, although acts done by other conspirators in other countries, in pursuance of the common design, may be given in evidence.<sup>6</sup> Venue.

Such was the law in England at the time Mr. Chitty wrote, but at a later period a difficulty was started over the form of an indictment to cheat and defraud. It had been held in the leading case of *Rex v. Gill* that an indictment was good which merely charged the defendants with "conspiring by divers pretences and subtile means and devices to obtain and acquire to themselves, of and from P. D. and G. D. divers large sums of money, of the respective moneys of the said P. D. and G. D., and to cheat and defraud them respectively thereof."<sup>7</sup> Lord Mansfield held that for an undigested conspiracy no form more stringent than this could be exacted. Upon general principles this would seem to be so. The gist of the crime being the conspiracy itself, and the execution of it a mere aggravation, it

Doctrine of  
*Rex v. Gill.*

<sup>1</sup> Wentworth's Pleadings, 4 Vol. 113-120-375; 3 Chitty's Cr. L., \*1145-\*1193; 1 Salk, 174; 2 Ld. Raymond, 1167; Cochrane's Case, 3 M. & S., 67.

<sup>2</sup> Archbold's Cr. Prac. & Pl., II Vol.; Waterman's notes, 1048, \*615.

<sup>3</sup> 1 Salk, 174; 2 Ld. Raymond, 1167.

<sup>4</sup> 2 Leach, 796.

<sup>5</sup> 1 East P. C. 461; 1 Esp. R., 206; 6 East, 417.

<sup>6</sup> 1 Salk, 174; 4 East. Rep., 171.

<sup>7</sup> *Rex v. Gill*, 2 B. & Ald., 204.

would follow that the crime is complete, though nothing be done in execution of it. And such has been held time and again. Hence, where the plans of the conspirators were immature, or had never been agreed upon, it would be impossible to require of the pleader that the indictment should specify what was never made known or acted upon. The most that could be exacted in such a case, as Mr. Wharton says, would be that the pleader should give the non-disclosure of the means as his reason for not setting them forth.<sup>1</sup>

Rex v. Gill  
discounte-  
nanced.

Re-affirmed.

Result of  
English  
cases.

Notwithstanding these considerations it was complained that Rex v. Gill encouraged too great laxity in pleading, and afforded but little notice to the defendants of the crimes with which they were charged.<sup>2</sup> For a time it was thought that Rex v. Gill had been overruled, but in Rex v. King<sup>3</sup> Lord Denman said: "The general form used in Rex v. Gill has constantly been held good," and Holroyd, J., said: "The conspiracy is the offence, and it is quite sufficient to state only the act of conspiring and the object of the conspiracy in the indictment. Here it is stated that the parties did conspire, and that the object was to obtain, by false pretences, money from a particular person. Now a conspiracy to do that would be indictable, even where the parties had not settled on the means employed." Patterson, J., was of the same opinion, in the still later case of Rex v. Gumpert<sup>4</sup> Lord Denman said: "The Court has never doubted the correctness of the decision in Rex v. Gill." The same view has been taken in later cases.<sup>5</sup> It is clear, therefore, that in England it is sufficient to charge defendants with conspiracy to defraud the prosecutor of his moneys "by divers false pretences and indirect means;" and the only positive qualifications which have been grafted on the principle are *first*, that it must appear from the indictment that the property sought to be obtained was not the property of the defendant; and, *secondly*, that if the indictment be general, the Court will order the prosecutor to furnish a bill of particulars of the charges to be relied on with-

<sup>1</sup> Wharton's Am. Cr. L., § 2298.

<sup>2</sup> R. v. Parker, 3 Q. B. 202; King v. R., 7 Ad. & E., N. S., 721; R. v. Peck, 9 Ad. & E., N. S., 686; R. v. Biers, 1 Ad. & E., 327.

<sup>3</sup> R. v. King, 7 Ad. & E., N. S., 721.

<sup>4</sup> Rex v. Gumpert, 9 Ad. & E., N. S., 824.

<sup>5</sup> Sydserff v. R., 11 Ad. & E., N. S., 245; R. v. Whitehouse, 6 Cox, C. C., 38; R. v. Carlisle, 6 Cox, C. C., 366; 25 Eng. Law & Eq., 577.

<sup>6</sup> R. v. Parker, 11 Law Jour., N. S., 102; Mag. C., 32 B., 292; 2 G. & D., 709.

out compelling him to state the specific acts to be proved, and the time and place at which they are alleged to have occurred.<sup>1</sup> Mr. Archbold says: "In strictness it is not necessary to insert overt acts at all, in an indictment for a conspiracy; the conspiring to effect an unlawful purpose by unlawful means, is the offence in law, and the overt acts or means used by the parties to effect it, are merely matter of evidence to prove the charge, and not the crime itself."<sup>2</sup>

There is a recognition, however, in all the cases of the distinction between conspiracies to commit indictable offences, and those to commit an act not in itself unlawful. In the former, the indictment need not set forth the means, as the criminality of the act is sufficiently apparent; in the latter, the means must be displayed in order to show the illegality. Where neither the end nor means are criminal, but the combination has a tendency to prejudice the public or to oppress an individual, it is not clear what the indictment ought to contain; the practice, however, would seem to demand the setting forth the means wherever practicable.

Before reviewing the American cases one or two observations must be made. At first sight it will appear that there is some confusion and conflict among the authorities, and that the English rule has been overthrown.

This impression is always sought to be made by counsel when assailing an indictment, and it has been, at times, successfully imposed upon the courts. No confusion ought to arise, however, at least in the weight to be attached to the several authorities, if close attention be paid to the following important points. (1) Points to observe. The pleader should not forget the dictum of Hawkins serve. that "an indictment should be a plain narrative of the Nature of the offence," and that therefore the nature of the offence must be borne in mind i. e., the pleader must not forget that the crime of conspiracy consists of the *conspiracy*, not of the execution of it; the overt acts constitute no part of the offence, but, at the most, are but evidence or aggravation of it. (2) The end of the conspiracy may be indictable *per se* or by statute. (3) The end may be lawful, and the *means* be indictable. (4) Both end and means may be lawful or indifferent, but the effect of the combination.

<sup>1</sup> R. v. Hamilton, 7 C. P., 448; Wh. Amer. Cr. L., § 2303.

<sup>2</sup> Archbold's Cr. Proc. & Pl., Waterman's notes, Vol. II, \*615-616.

Conspiracies  
to cheat and  
defraud.

Comments on  
State v. Bu-  
chanan and  
Comm. v.  
Shedd as il-  
lustrations of  
opposing  
rulings.

Date of de-  
cisions must  
be regarded.

be to prejudice the public or to oppress an individual. (5) It is also to be observed that the class of cases in which conflicting rulings as to the form of an indictment, most frequently occur, is that of conspiracies to cheat and defraud, and the chief doubt has always been whether such a conspiracy was indictable *per se* at Common Law, for the reason that no cheats were indictable at Common Law unless accomplished by false tokens, weights, and measures. This class of cases is divided into two divisions; the first division, represented by State *v.* Buchanan,<sup>1</sup> has held uniformly that such a conspiracy was indictable at Common Law, irrespective of the means employed; the second division, represented by Comm. *v.* Shedd,<sup>2</sup> has held that it was not so. It must be noticed that in State *v.* Buchanan, while it was ruled that a bare conspiracy to cheat and defraud was indictable at Common Law, the indictment in that case *did set forth* the means, and that no discussion as to the form of the indictment arose before the court; while in Comm. *v.* Shedd, although it was ruled that a bare conspiracy to cheat and defraud (without employment of false tokens) was not indictable at Common Law, yet the means were *not set forth* in the indictment, which was consequently held to be bad. Whether the setting forth of means (not in themselves indictable) would have made the combination criminal, on the ground of prejudice to the public, or of oppression to the individual sought to be defrauded, was not decided, although there appears to run through the opinion of the court, and also through those which have followed the lead of Comm. *v.* Shedd, an assumption that it would amount to a crime—a doctrine which could be easily justified by a review of all the American cases outside of the special class, which, as we have elsewhere shown, has sought to limit the law of conspiracy within bounds not justified by the great weight of authority. (6) Special attention should be paid to the *date* of the decisions.

The early American cases follow the rule of Rex. *v.* Gill; then there is a departure from that rule; the later cases, except those of Massachusetts, Maine, Iowa and Michigan, which have followed Commonwealth *v.* Shedd without attention to the fact to be next noticed, have restored the rule of Rex *v.* Gill, especially in Pennsylvania. (7) It is to be observed that Comm. *v.* Shedd, which is the foundation of the idea that the English

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<sup>1</sup> State *v.* Buchanan, 5 Har. & J. (Md), 317.

<sup>2</sup> Comm. *v.* Shedd, 7 Cush. (Mass.), 514.

rule of *Rex v. Gill* has been exploded, was decided at a time when it was supposed, even in England, that *Rex v. Gill* had been overruled, and in later decisions no attention has been paid to the recent English cases in which the rule of *Rex v. Gill* was not only distinctly re-announced but all thought of its having been overruled was distinctly repudiated.<sup>1</sup>

It is believed that attention to these considerations will do much to remove apparent contrarieties of decision, and show that, though *Comm. v. Shedd* was undoubtedly correctly decided, so far as the case before the Court was concerned (assuming that a conspiracy to cheat and defraud is not indictable *per se* at Common Law, although the contrary was held in *State v. Buchanan*) yet its reasoning has been misapplied, and somewhat inconsiderately followed.<sup>2</sup>

The following considerations appear to be the only safe and practicable ones to rely upon in drafting an indictment:

(a). It is evident that where the *end* is unlawful, it cannot be necessary to set forth the means, as a mere agreement, even if unexecuted, to commit a crime, *malum in se* or *malum prohibitum*, is of itself the crime of conspiracy. If unexecuted, the means cannot be stated; if executed, the means employed are but evidence of the offence or an aggravation of it. It cannot, therefore, be necessary to state the means. If, however, the means are stated another danger must be guarded against, and that is the danger of merger. Care must be taken, in preparing indictments for conspiracies to commit felonies, to charge the offence as merely an unconsummated attempt. If, either in an overt act (which it is unnecessary to set forth) or in the body of the count, the commission of the actual offence be charged, the conspiracy merges in the felony, and the indictment will not support a conviction. If the conspiracy has been executed, and the felony actually committed, a charge of conspiracy would be futile. The conspirators ought to be jointly indicted directly for the felony. Where, however, there is a doubt as to whether the crime has been consummated or not, and therefore whether it would be proper to charge a misdemeanor or a felony, it has become usual, in order to obviate the difficulties and dangers of merger, to join several counts, in a kindred line of offences. The prac-

Caution as to  
Comm v.  
*Shedd*.

Caution as to  
indictments  
to commit  
felonies so as  
to prevent a  
merger.

<sup>1</sup> See *Ante* pp., 187-8.

<sup>2</sup> In this conclusion I am happy to have the support of Mr. Bishop, Cr. Law, 7th Edit., Vol. II. Ch. Cons.

Joinder of counts.

tice has been countenanced by our Courts, though originally discountenanced in England. It can work no injustice to the prisoner, while it saves both time and expense. Thus counts for robbery, and for attempts to rob; for rape and attempts to ravish; for burglary and attempts to commit burglary are frequently joined.<sup>1</sup> When the defendant is brought to trial on the two charges together he has the advantage of bringing to bear on the lighter offence the full number of challenges awarded to him on the heavier. The same evidence which would disprove the attempt would disprove the consummation. The only difference is, that instead of, after an acquittal of the felony, being subject to another binding over and trial on the constituent misdemeanor, the two charges are tried at the same time. That this practice extends as properly to conspiracies to commit indictable offences, as to attempts or assaults with intent to commit the same, may be urged with great reason. Such is the view of Mr. Wharton.<sup>2</sup> By such a course the difficulty of merger will be avoided; for if the attempt was completed, the verdict attaches to the felony; if not, to the conspiracy. If, however,

If overt act is pleaded as a constituent constituent misdemeanor sentence may be pronounced for the constituent constituent misdemeanor.

in the Count charging the conspiracy, an overt act is stated, and if the overt act is pleaded as a constituent misdemeanor, then, in that case, upon a general verdict of guilty the Court may, in its judgment, sentence for the constituent misdemeanor. Thus, if the limit of the law for conspiracy is two years, and for the constituent misdemeanor it may be more, then although there is a simple count for conspiracy, with the overt acts properly pleaded in it for a constituent misdemeanor, judgment may be given for the constituent misdemeanor. This was illustrated by Mr. Ker in his argument for the Government in the Star Route Cases. He referred to *Comm. v. Westervelt*,<sup>3</sup> where the defendants were charged with conspiracy to abduct Charlie Ross. The overt act was pleaded that he actually did abduct the child. Upon trial he was convicted. After conviction the matter was elaborately argued and it was held that the Court was right to sentence him for the constituent misdemeanor, and although under the law of Pennsylvania, for a conspiracy unexecuted, the party could

<sup>1</sup> *Comm. v. Gillespie*, 7 S. & R., 469; *Harman v. Comm.*, 12 S. & R., Pa., 69; *Burk v. State*, 2 Har. & J., Md., 426; *State v. Coleman*, 5 Porter, 52; *State v. Montague*, 2 McC., 287; *State v. Gaffney, Rice*, 451; *State v. Boise*, 1 M'M., 190.

<sup>2</sup> *Wharton's Prec. of Indictments & Pleas*, 2d Edit., 437, 607.

<sup>3</sup> *Comm. v. Westervelt*, 11 Phila. Rep., 461.

have been sentenced only to two years' imprisonment, yet for the abduction the sentence was for seven years. The case was taken to the Supreme Court which, by refusing an allocatur, solemnly affirmed the judgment.<sup>1</sup>

(b). If the end is lawful, but the crime consists in the means employed (an agreement to do a lawful end by unlawful means being conspiracy) it is plain that the means should be set forth in order to disclose the criminality of the act charged in the indictment. Where the act by unlawful means being conspiracy) it is plain that the means should be set forth in order to disclose the means charged in the indictment. must be set forth.

(c). The same remark may be predicated of combinations where both end and means are lawful, but the effect is to prejudice the public or to oppress an individual, and, as in this class of cases (notably those strikes and boycotts) the illegality, resulting in prejudice to the public or oppression of an individual, arises mainly out of the violence or threats or intimidation employed by the strikers, it is plain that the means resorted to ought to be specifically stated in the indictment.

The rules to be observed in the framing of indictments, and the reasons in support thereof, are well and briefly stated by Judge Duncan, of the Supreme Court of Pennsylvania, in the case of Comm. v. Gillespie.<sup>2</sup>

In speaking of the indictment, which charged a conspiracy to sell a lottery ticket and tickets in a lottery not authorized by the laws of the Commonwealth, he says: "I do not think it necessary to set out the ticket or tickets; but the indictment should state what was the name of the lottery, and the number of tickets sold, where the charge is for advertising or selling. For the charge must contain a certain description of the crime of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation, lest the grand jury should find a bill for one offence, and the defendant be put on his trial for another, without any authority; so that the Court may see a definite offence on the record, that they may apply the judgment and the punishment which the law prescribes; and so that the defendant's conviction or acquittal may insure his subsequent protection; that he may be enabled to plead it in bar of any subsequent proceedings. The indictment ought to state the fact, with as much certainty as the nature of the crime will admit."

It was held in the same case, however, that if there

<sup>1</sup> Comm. v. Westervelt, 11 Philada. Rep. 461.

<sup>2</sup> Comm. v. Gillespie, 7 S. & R., Pa., 475.

be an attempt to set forth the ticket the recital must be a literal quotation of the ticket; and a variance in spelling a name, though the sound is the same, as Bur-rill for Burrall, is fatal.

Penna. cases. As the cases in Pennsylvania afford a fair illustration of the fluctuations in the current of authority, we propose to consider them in their chronological order.

The next case is that of *Comm. v. McKisson*,<sup>1</sup> in which it was held by Chief Justice Gibson, that in an indictment for a conspiracy to cheat no overt act need be set forth. In this case the argument, which was successfully urged upon the Court in *Comm. v. Shedd* was urged also, that to constitute the crime of a cheat it was necessary that some false token should be used, and that the assertion of a falsehood which common prudence could guard against, is not indictable. Judge Gibson disposed of the matter very summarily. He said: "The authorities relied on by the counsel for the defendants relate to indictments for actual cheating; not to conspiracies to cheat. But between these there is a plain difference. Where the crime is consummated, there must have been overt acts, as well as the employment of false tokens; and as these are essentially constituent parts of the offence, they must be set out; but in conspiracy, the confederating is the gist of the offence, and as no overt act is necessary to complete it, none need be laid; and this much was determined in *Collins v. The Commonwealth*.<sup>2</sup> But there may be confederacies which are lawful; and you must therefore, set forth some object of the confederates which would be unlawful for them to attain, either singly, or which, if lawful singly, it would be dangerous to the public to permit to be attained by the combination of individual means. For it is the object that imparts to the confederacy its character of guilt or innocence; and of the nature of such object, and the bearing which the various kinds of it may have on the question in different cases, it is at present necessary to say no more, than that where it is the doing of an act which would be indictable, it will undoubtedly render the confederacy criminal. But in stating the object, it is unnecessary to state the means by which it was to be accomplished, or the acts that were to be done in pursuance of the original design; they may, in fact, not have been agreed on. You need not set forth more of the

Means need  
not be stated.

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<sup>1</sup> *Comm. v. McKisson*, 8 S. & R., 420.

<sup>2</sup> *Collins v. Comm.*, 3 S. & R., 220.

object than is necessary to show it, from its general nature, to be unlawful; for that is all that is necessary to determine the character of what is, in truth essentially and exclusively the crime—the confederating together; and this is proved by the precedents produced on the part of the Commonwealth."

This decision was followed in *Clary v. Comm.*<sup>1</sup> which was the case of a conspiracy to cheat and defraud a foreign bank and citizens of the Commonwealth of Pennsylvania, by uttering certain forged notes of the said bank. It was held that in an indictment for such an offence no overt act need be set forth. In *Hartman v. Comm.*<sup>2</sup> a stricter rule was laid down. The case was one of a conspiracy to defraud creditors, by secreting and receiving divers goods belonging to the defendants, the quantities and qualities of which were unknown, with intent to defraud said creditors. And the same judge who delivered the opinion in the case of *Comm. v. McKisson* expressed himself as follows: "There is one vice in this indictment, which runs through every part of it. The conspiracy, as charged, is not to do an act illegal in itself, or by combination of numbers and means in the execution of it, but New rule announced. to do an act thought to be specifically prohibited by statute. It is certainly not criminal, by the Common Law, to obtain a false credit by any other means than the use of a false token, or to secrete a debtor's property with a design to keep it from his creditors. But such acts are penal by the statute to abolish imprisonment for debt. Now, to constitute a conspiracy, the purpose to be effected by it must be unlawful, either in respect of its nature, or in respect of the means to be employed for its accomplishment; and the intended act, where it has not a Common Law name to import its nature, must, in order to show its illegality, be set forth in an indictment for conspiracy, with as much certainty as would be necessary in an indictment for the perpetration of it; otherwise it would not be shown to be criminal, nor would the confederates be shown to be guilty. The English Courts are beginning to regret the laxity of description that has been tolerated in these indictments for conspiracy, and policy requires that the judges, here as well as there, should begin to retrace their steps." \* \* \* "Neither time, place nor circumstance is given; and the goods are not attempted

<sup>1</sup> *Clary v. Comm.*, 4 Barr, 210.

<sup>2</sup> *Hartman v. Comm.*, 5 Barr, 60.

to be described by the place where they were kept or by the person who had them in custody." \* \* \*

"Now, though it may not be necessary, in an indictment for conspiracy, so minutely to describe the unlawful act when it has a specific name which indicates its criminality, yet, where the conspiracy has been to do an act prohibited by statute, the object which makes it unlawful can be described only by its particular features; and without doing so, it cannot be shown that the confederates had an unlawful purpose. It may be said that the form of a criminal purpose, meditated but not put in act, can seldom be described; but it can be as readily laid as proved. Precision in the description of the offence is of the last importance to the innocent, for it is that which marks the limits of the accusation and fixes the proof of it."

Old rule re-established.

It was not long, however, before the extent of Judge Gibson's remarks was sought to be restrained. In *Comm. v. McGowan*,<sup>1</sup> the opinion was severely criticised. In *Twitchell v. the Commonwealth*,<sup>2</sup> *Comm. v. Kisson*<sup>3</sup> was again expressly recognized. In *Hazen v. Comm.*<sup>4</sup> it was held that in an indictment for a conspiracy to solicit, induce and procure the president, cashier and directors of a bank to violate the provisions of an act regulating banks, the means by which the conspiracy was to be accomplished need not be set out. It was said by Lewis, J.: "In an indictment for a conspiracy to do an act prohibited by the Common Law, where the act has a specific name which indicates its criminality, it is not necessary to describe it minutely. But it has been thought that where the object of the conspiracy is merely forbidden by the statute, it can be described only by its particular features, *Commonwealth v. Hartman*, Lewis' U. S. Crim. Law, 223. But even in offences of this character it has never been held necessary to set forth the unlawful object with the precision required in an indictment for perpetrating it. It is the conspiracy, and not the object sought to be accomplished, by it that is the subject of indictment. Where the indictment is for an act done, it is always in the power of the prosecutor to lay it with certainty; and this the accused has a right to require as well for the purposes of his defence as for protection against a second prosecu-

<sup>1</sup> *Comm. v. McGowan*, 2 Parsons, 340.

<sup>2</sup> *Twitchell v. Comm.*, 9 Barr, 211.

<sup>3</sup> *Comm. v. McKisson*, 8 S. & R., 420.

<sup>4</sup> *Hazen v. Comm.* 23 Pa. St., 355; See also *Comm. v. Foering*, Brightly's Rep., 315; *Rhoads v. Comm.*, 3 Harris, 272.

tion for the same cause. But this reason does not extend to an object which may never have been accomplished, and which is not the gist of the offence charged, although an essential ingredient in it; Commonwealth *v.* Gillespie, 7 S. & R., 475-6."

This was followed by Williams *v.* The Commonwealth.<sup>1</sup> It may be said, therefore, that the decided tendency of the cases in Pennsylvania, is to the re-establishment of the rule announced in Rex *v.* Gill. Such is the opinion of Mr. Wharton.<sup>2</sup>

The Pennsylvania cases are sustained in their tendency by the early cases in Massachusetts,<sup>3</sup> the decisions in Maryland,<sup>4</sup> New Hampshire,<sup>5</sup> the later decisions of Ill., S. C., Va. New Jersey,<sup>6</sup> those in Illinois,<sup>7</sup> South Carolina,<sup>8</sup> Virginia,<sup>9</sup> and Alabama.<sup>10</sup>

The class of cases which maintain an opposite tendency is composed chiefly of those relating to conspiracies to cheat and defraud, and, as has been noticed, an effort was made to limit the offence of conspiracy to crimes which were in themselves indictable, or made so by statute, or where the means were of themselves indictable crimes or indictable by statute. Of this class, the Massachusetts cases are the types. The earliest case is that of Commonwealth *v.* Eastman,<sup>9</sup> followed by Commonwealth *v.* Shedd,<sup>10</sup> in both of which it was distinctly held that the object or the means must appear upon the face of the indictment to be criminal. In the first of these cases, Judge Dewey used this language: "The offence of conspiracy, in one respect, is doubtless peculiar. It may, unlike most offences, be committed without an overt act. A criminal purpose to do an unlawful act, or to do a lawful act by criminal means mu-

Rule in Mass.

<sup>1</sup> Williams *v.* Comm., 34 Pa. St., 178.

<sup>2</sup> Wharton's Am. Crim. Law, 9th Edit., Vol. III, § 2305.

<sup>3</sup> Commonwealth *v.* Ward, 1 Mass., 473; Commonwealth *v.* Tibbits, 2 Mass., 473; Commonwealth *v.* Judd, 2 Mass., 329.

<sup>4</sup> State *v.* Buchanan, 5 Harris & Johnson, 317.

<sup>5</sup> State *v.* Burnham, 15 N. H., 396; State *v.* Parker, 43 N. H., 83.

<sup>6</sup> State *v.* Norton, 3 Zab. (N. J.), 33; State *v.* Young, 8 Vroom, 184; State *v.* Donaldson, 3 Vroom, 151; Johnson *v.* The State, 2 Dutcher, 33; Same case, 5 Dutcher, 453; State *v.* Cole, 10 Vroom, 324; State *v.* Hickling, 12 Vroom, 208; Noyes *v.* The State, 12 Vroom, 418.

<sup>7</sup> Smith *v.* People, 25 Ill., 17.

<sup>8</sup> State *v.* Cardoza, 11 S. C., 195; State *v.* DeWitt, 2 Hill 282; State *v.* Shooter, 8 Richardson 72.

<sup>9</sup> Anderson *v.* The Commonwealth, 5 Randolph, 627.

<sup>10</sup> State *v.* Murphy, 6 Ala. 765.

<sup>11</sup> Commonwealth *v.* Eastman, 1 Cushing, 189.

<sup>12</sup> Commonwealth *v.* Shedd, 7 Cushing, 514.

The act or the  
means must  
be shown on  
the face of  
the indict-  
ment to be  
criminal.

tually assented to or agreed upon by two or more persons may, by such assent and agreement, ripen into crime, although no act be done in pursuance of it. *The act itself or the means must on the face of the indictment be shown to be indictable.* The words "cheat" and "defraud" do not import any known Common Law offence. If punishable at all as a crime it is only where the cheat is effected by false tokens, false pretences, or the like; to make such an object of conspiracy a criminal act, the combination or agreement must be to cheat and defraud in some of the modes made criminal by the statute, and the indictment must contain allegations which show that the cheat and fraud agreed upon are embraced by some of the provisions of the statute, and if perpetrated they would be punishable as a criminal offence." In *Commonwealth v. Shedd*, the same Judge said: "It is well settled that the general allegation that two or more persons conspired to effect an object criminal in itself, as to commit a misdemeanor or a felony, is quite sufficient, although the indictment omits all charges of the particular means to be used. It is equally well settled that the general charge of a conspiracy to effect an object not criminal is insufficient. The charge of such a conspiracy is to be accompanied with the further statement of the means the conspirators concerted and agreed to use to effect the object, and these means must appear to be criminal."<sup>1</sup>

The same view is taken by Copeland, J., in the Michigan case of *Alderman v. The People*.<sup>2</sup> After reviewing many decisions, and admitting that there were many of a contrary tendency, he said: "From the whole current of well-considered decisions, the following principles are clearly deducible: First, That to constitute an indictable conspiracy, there must be a combination of two or more persons to commit some act known as an offence at Common Law, or that has been declared such by statute. Second, If a conspiracy be to commit an offence known and recognized as an offence at Common Law, so that by describing it by the term by which it is generally known the nature of the offence is clearly indicated, then it will be only necessary to use such term in describing the object of the conspiracy. Third, If, on the contrary, the combination be to do an act, not in itself unlawful, but which it is agreed to accomplish by criminal or unlawful

<sup>1</sup> To the same effect see *Comm. v. Prius*, 9 Gray, (Mass.), 127; and *Comm. v. Wallace*, 16 Gray, 221.

<sup>2</sup> *Alderman v. People*, 4 Michigan, 414.

means, then those means must be particularly set forth, and be such as constitute an offence either at Common Law or by statute." He vindicates this rule by saying, "the gist of the offence in conspiracy is the unlawful combination and agreement. The combination and agreement, the intent to commit the illegal act, constitute the offence, and in this respect it differs from the general rule of criminal law; but there seems to be no good reason for going further and judicially determining, in new cases as they arise, acts to be an offence which are not such at Common Law, nor have been declared such by any statute, and for departing entirely from the general rule of pleading in criminal cases that such facts must be stated upon the record as in the judgment of law are sufficient to constitute an offence."

A broader view was taken in *People v. Richards*,<sup>1</sup> but in *People v. Clark*,<sup>2</sup> the Court fell back on the word "unlawful" instead of "criminal." Judge Campbell said: "If the end be unlawful, that and that only need be alleged; but if the end be lawful, the unlawful means must appear; every criminal charge must show on its face what criminality is alleged against the defendant."

To the same effect is the recent case of *State v. Stevens*,<sup>3</sup> but see the qualifications of this doctrine in *State v. Ormiston*.<sup>4</sup> To the same effect are other Iowa decisions.<sup>5</sup> The decisions in Maine are in the same direction.<sup>6</sup> In *State v. Ripley* it was said: "If the conspiracy is to do an act which, if done, would be a criminal act, the offence is perfect with reference to the means used, and it is necessary that this criminal purpose should be so specifically alleged as to be understood. If the conspiracy consists in the unlawful means to be employed, those means which are relied on as giving the wrongful agreement a criminal character should be stated." And in *State v. Mayberry*,<sup>7</sup> it was held that "to sustain an indictment for a conspiracy to cheat and defraud, it must be especially averred that the act was to be accomplished by unlawful means." Judge Rice, in delivering the opinion of the Court, said:

Decisions in  
Iowa and  
Maine.

<sup>1</sup> *People v. Richards*, 1 Mich., 216.

<sup>2</sup> *People v. Clark*, 10 Mich., 310.

<sup>3</sup> *State v. Stevens*, 30 Iowa, 392.

<sup>4</sup> *State v. Ormiston*, 66 Iowa, 143.

<sup>5</sup> *State v. Jones*, 13 Iowa, 269; *State v. Potter*, 28 Iowa, 554. Also *State v. Keach*, 40 Vermont, 113; *State v. Rickey*, 4 Halsted, N. J., 293.

<sup>6</sup> *State v. Bartlett*, 30 Maine, 132; *State v. Hewett*, 31 Maine, 396; *State v. Ripley*, Ibid, 386; *State v. Roberts*, 34 Me., 322.

<sup>7</sup> *State v. Mayberry*, 48 Maine, 218.

"When the act to be accomplished is itself criminal or unlawful, it is not necessary to set out in the indictment the means by which it is to be accomplished; but when the act is not within itself criminal or unlawful, the unlawful means by which it is to be accomplished must be distinctly set out. Cheating and defrauding a person of his property, though never right, was not necessarily an offence at Common Law. The transaction might be dishonest and immoral and still not be unlawful in the sense in which that term is used in criminal law. Hence the mere charge that the defendants conspired to cheat and defraud one H. B. would not be sufficient. To sustain an indictment for that cause it must appear by the averments in the indictments that the act was to be accomplished by criminal or unlawful means."

Rule in N. Y.

In the leading case of *Lambert v. The People*,<sup>1</sup> the decision of the Supreme Court of the State of New York<sup>2</sup> was overruled. The Supreme Court had held that an indictment would lie for a conspiracy to defraud an individual of his property and that the indictment might be in very general terms as to a description of the offence, its object, and the persons concerned. On error The Court for the Trial of Impeachments and the Correction of Errors being equally divided whether this was a valid indictment, it was decided by the casting vote of the President that it was defective and the judgment was reversed. It was held that where an indictment for a conspiracy does not set forth the object specifically and show that such object was a legal crime, it should particularly set forth the *means* intended to be used by the conspirators and show that those means are criminal. Otherwise the charge is of no crime which the law can notice. Where such a fraud as may be punished criminally is actually committed by several persons in pursuance of a conspiracy between them for that purpose, the conspiracy as such is not indictable, but the fraud only. It was doubted whether an indictment would lie for a conspiracy to produce a mere private injury which is not a legal crime and would not affect the public or obstruct public justice. But it was further said by Senator Spencer, who delivered the opinion of the majority of the Court, that an indictment charging generally that the defendants conspired to defraud an individual, and

<sup>1</sup> *Lambert v. The People*, 9 Cowen, 598.

<sup>2</sup> 7 Cowen, 166.

not showing the intended means by which the fraud was to be compassed, was bad.

This was similar in expression to the opinion of Chief Justice Shaw, in *Commonwealth v. Hunt*,<sup>1</sup> who held that it is not necessarily a punishable crime to defraud one of his money, goods, or estate, nor to cheat and defraud one of the same, nor wrongfully and wickedly to obtain his money and other property designedly and with intent to defraud. Therefore, an indictment charging a conspiracy with such intents, and specifying no criminal means designed to be used to effect such intents, is insufficient. And further that an indictment for a conspiracy to compass or promote a criminal or unlawful purpose must set forth that purpose clearly and fully.

This view was stoutly contested in a very able opinion by Senator Stebbins, and the matter was left in such doubt that an Act of the Legislature was passed, defining the crime of conspiracy and stating the necessity in order to constitute the crime, of some overt act.

In *March v. The People*,<sup>2</sup> it was held that an indictment for a conspiracy should set out the means intended to be used, and where these means are insufficient to have the effect of defrauding a person of his property, the alleged object of the conspiracy, the offence is Later New York Cases. incomplete.

And in *Elkin v. The People*,<sup>3</sup> it was held that an indictment for a conspiracy which avers that the accused with another person conspired unlawfully and maliciously to procure a third person to be arrested for the offence of larceny, well knowing that he was not guilty of said offence, follows the statute, substantially and contains all the averments needful to sustain conviction.

From this review of the decisions it would appear that they all agree in stating, that where the *end* of the conspiracy is indictable *per se* or by statute, the means need not be set forth in the indictment; that where the end is lawful but the *means* are unlawful, it is necessary to set forth the means in order to establish on the face of the indictment the criminality of the defendants. The same is necessary wherever both end and means are lawful, but the effect of the combination is to prejudice the public or to oppress an individual. Of this latter class the best illustrations are the cases reviewed in the section upon strikes and boycotts.

Result of the Decisions.

<sup>1</sup> *Commonwealth v. Hunt*, 4 Metcalf, Ill.

<sup>2</sup> *March v. The People*, 7 Barbour, N. Y., 391.

<sup>3</sup> *Elkin v. The People*, 28 N. Y., 177.

The only real conflict between the cases is where one class, of which *State v. Buchannan*<sup>1</sup> is the type, has extended the law of conspiracy beyond the bounds recognized and prescribed in the other class, of which *Commonwealth v. Eastman*,<sup>2</sup> and *Commonwealth v. Shedd*<sup>3</sup> are the best examples. In the first case, it was held that a conspiracy to cheat and defraud was indictable at Common Law, and therefore it was not necessary to state the means in the indictment, as the object of the conspirators was to accomplish a Common Law offence. In the latter cases, it was held that it was not indictable at Common Law to conspire to cheat and defraud, unless the means resorted to were criminal, and that therefore the end not being criminal, the means must be set forth, in order to display the criminality of the act charged. It is believed that this is the only real conflict between the cases, and that if strict attention be paid to the class to which each case cited properly belongs, no reason can exist for confusion of thought or apprehension in regard to the extent or value of the authorities cited.

Comments on  
conflict of de-  
cision.

The cases in the Courts of the United States, which are under the Revised Statutes, are as follows:

Decisions of  
the Courts of  
the United  
States.

The Supreme Court of the United States in the case of *the United States v. Hirsch*,<sup>4</sup> used this language: "The gravamen of the offence here is the conspiracy. For this, there must be more than one person engaged. Although by the statute something more than the Common Law definition of a conspiracy is necessary to complete the offence, to wit, some act done to effect the object of the conspiracy, it remains true that the combination of minds in an unlawful purpose is the foundation of the offence, and that a party who did not join in the previous conspiracy cannot, under this section, be convicted of the overt act." The Judge then quotes the language of section 5440 and then continues, "the conspiracy here described is a conspiracy to commit any offence against the United States. The fraud mentioned is any fraud against them. It may be against the coin, or consist in cheating the Government of its lands and other property. The offence may be treason, and persons have been convicted under this statute for a conspiracy to do the acts which constitute treason against the United States."

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<sup>1</sup> *State v. Buchanan*, 5 Harris & John (Md.), 317.

<sup>2</sup> *Comm. v. Eastman*, 1 Cush. (Mass.). 189.

<sup>3</sup> *Comm. v. Shedd*, 7 Cush., 514.

<sup>4</sup> *United States v. Hirsch*, 100 U. S., 33.

This quotation shows the general scope of the Revised Statutes of the United States intended to suppress the crime of conspiracy. In the case of the United States *v. Cruikshank*,<sup>1</sup> the Court, after reviewing all the State authorities alluded to in the preceding part of this chapter, used this language: "It is a crime to steal goods and chattels, but an indictment would be bad that did not specify, with some degree of certainty, the articles stolen. This, because the accused must be advised of the essential particulars of the charge against him, and the Court must be able to decide whether the property taken was such as was the subject of larceny. So, too, it is, in some States, a crime for two or more persons to conspire to cheat and defraud another out of his property; but it has been held that an indictment for such an offence must contain allegations setting forth the means proposed to be used to accomplish the purpose. This, because to make such a purpose criminal, the conspiracy must be to cheat and defraud in a mode made criminal by statute; and, as all cheating and defrauding has not been made criminal, it is necessary for the indictment to state the means proposed, in order that the Court may see that they are in fact illegal." (Cites State *v. Parker*, 43 N. H., p. 83; State *v. Keach*, 40 Vt., 118; Alderman *v. The People*, 4 Mich., 414; State *v. Roberts*, 34 Maine, 320). And continued, "therefore, the indictment should state the particulars to inform the Court as well as the accused. It must be made to appear, that is to say, appear from the indictment, without going further, that the acts charged will, if proved, support a conviction for the offence."

*U. S. v. Cruikshank*—a leading case.

In the case of the United States *v. Degrief*,<sup>2</sup> the Court in speaking of the indictment in that case, after stating that the adjudged cases uniformly recognized the rule that a general allegation that two or more persons conspired to effect an object criminal in itself, as to commit a misdemeanor or felony, is sufficient, even though the indictment omits all charges of the particular means to be used, states that it was objected, to the indictment under consideration, that it failed to show to the Court that the matter in papers which were suppressed, and which it was claimed would prove the fraudulent importation of certain goods, would be evidence of a fraud upon the United States, and said: "It is further objected, that the indictment fails to show to

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<sup>1</sup> U. S. *v. Cruikshank*, 2 Otto, 542.

<sup>2</sup> United States *v. DeGrief*, 16 Blatch., 21.

the Court that the matter in the papers would be evidence of a fraud upon the United States. There is no occasion to question the necessity which this indictment assumes; or proving, in a case like this, that the result sought to be attained by the agreement to destroy these papers was the suppression of evidence of fraud contained in the papers. But that is a fact to be shown by evidence, as to the terms of the agreement and its surrounding circumstances, whether those facts and circumstances will warrant the jury in saying that the result which the defendants sought to obtain by this conspiracy was that charged in the indictment, is to be determined when the evidence has been given at the trial." In considering the effect of the decision of the United States Supreme Court in the case of *United States v. Cruikshank*,<sup>1</sup> it was said: "But the indictment in Cruikshank's case was not for a conspiracy to commit an offence and the determination in respect thereto, cannot, therefore, be authority in a case like this. That indictment was under the sixth section of the Enforcement Act of May 30th, 1870, now found, in a modified form, in section 5508 of the Revised Statutes, which makes it an offence against the United States to conspire to do certain described acts with a certain described intent. The ingredients of the offence are found in the provisions creating it, and the Court held that all those ingredients must be stated in the indictment, with such specification and detail as to enable the Court to see that the offence created by the Enforcement Act had been committed. The present indictment is for a conspiracy of a different character, made an offence by a different statute, and having different ingredients. By the section under which this indictment was drawn, a crime is committed when the agreement is to commit any offence against the United States, without regard to the result sought to be obtained by making the agreement. It is true, that the opinion of the Supreme Court, in the case of *Cruikshank*, deals to a certain extent with the general requisites of an indictment; but I fail to find there any indication of an intention to lay down a rule in regard to the requirements of an indictment like the present, or to state any rule at variance with the law declared in the cases which I have above quoted."

The proper distinction is here clearly and distinctly drawn. In the *Cruikshank* case the indictment was for violating the requirements of an act of Congress which

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<sup>1</sup> Ut supra.  
(4886)

contains specified ingredients of the offence, and the Court said that all those ingredients should be set out. In the ordinary case of a conspiracy to commit an offence against the United States under section 5440 of the Revised Statutes, the two ingredients are a combination to do some act against the United States and something done in execution of that combination. It is believed that if these ingredients and the overt act are set out an indictment would be good.<sup>1</sup>

Perhaps the most exhaustive consideration of the form of an indictment in recent times was that given by the Supreme Court of the District of Columbia, in *The Star* the case of the United States *v.* Dorsey *et al.*—the case *Star Route Case*, which has become famous as the *Star Route Case*.<sup>2</sup> The whole ground was thoroughly traversed and all material bearing upon the subject threshed and sifted by counsel and the Court. The indictment was drawn by special counsel, employed by the Attorney General because of his particular knowledge and skill in this line of professional duty, and was sustained by the Court, and approved as being skillful in structure and accurate in form. An analysis of the indictment<sup>3</sup> shows that the Analysis of conspiracy is first charged, together with its fraudulent indictment. purpose, and that it was for the common gain of all the defendants; the residue of the paper is occupied with a specification of the numerous acts of the several parties to the conspiracy, by means of which the alleged frauds against the Government were executed. One of the defendants, Brady, was the Second Assistant Postmaster General, and in a position to aid in the execution of the fraud. Turner, a clerk, was in the same branch of the department, subordinate to Brady, and occupied a position where, if he were honest and capable, he might have detected and exposed any attempted fraud, but if interested and so inclined, might render important aid in its perpetration. John W. Dorsey, John R. Miner and John M. Peck, had twenty one different contracts amongst them, and the indictment charged that the other defendants, Stephen W. Dorsey, Henry M. Vaile, M. C. Rerdell and J. L. Sanderson were interested in all of these contracts, and, as it was elsewhere shown, they were severally sub contractors on a number of the routes.

It was contended that the indictment was bad, and

<sup>1</sup> U. S. *v.* Boyden, 1 Lowell, 266. U. S. *v.* Dennee, 3 Woods, 52.

<sup>2</sup> *The Star Route Case*, Washington, 1882.

<sup>3</sup> See Appendix III.

the Court, after adopting the principles laid down in the case of the U. S. v. Cruikshank, said: "Let us now examine one or two of these overt acts, as set out in the indictment, to ascertain whether or not they are indictable offences in themselves. The indictment is an elaborate and carefully prepared instrument, covering eighty-three printed pages, and containing but one count, all the parts being put together artistically and with logical method. The offence charged is that of a conspiracy on the part of the defendants to defraud the United States by means of the several contracts and devices set out and charged in the instrument, by the success of which the United States suffered losses to a very large amount. It was, as charged, a conspiracy executed or carried out to a successful result in favor of the conspirators and to the corresponding injury of the Government." Judge Wiley then quotes the language of Section 5440 of the Revised Statutes, and proceeds: "This act changes the Common Law in two respects. First, That conspiracy of itself without an overt act is not indictable under the statute; and, second, in respect of the degree of punishment which is limited by the statute, but which at Common Law was in the discretion of the Court. \* \* \* \* \*

For the purpose of this case it is requisite that the indictment should show by proper allegations, first, the existence of a conspiracy between the defendants; second, that the object of the conspiracy was to defraud the United States; and, third, that one or more of the defendants did some act to effect the object of the conspiracy, namely, to commit a fraud on the United States. As to these, it is clear that the conspiracy itself is sufficiently set out. It is equally clear that the purpose to defraud is sufficiently charged. The only matter open for dispute in this respect is whether the acts done to effect the object of the conspiracy are such acts, and so alleged, as are sufficient to make out the offence forbidden by the statute." The Judge then proceeds to examine one or two of these overt acts with a view of ascertaining whether they were not indictable offences in themselves, and says: "If they be such, and are set forth with such clearness and precision, as to be notice to the defendants of the nature of the charges made, and to the Court, that it may judge, from an inspection of the indictment whether the facts alleged, if they should be proved at the trial, would constitute an offence or offences, indictable under any statute, this indictment is good." After an exhaustive examination, the Court

determined that the defendants were charged with offences indictable under sections 5498 and 5501 of the Revised Statutes of the United States, and sustained the indictment. Although it was contended in the argument that the allegations set out in the indictment, for the purpose of specifying the acts done in pursuance of the conspiracy, were not sufficiently full, concise, and exact; and that when the indictment referred to any affidavit or petition or other writing employed by the defendants for the purpose of effecting the object of the conspiracy, it should have been set out in full and pointed out in what respects it was false, fraudulent or forged, with as much detail and precision as are required in an indictment for forgery or other crimes, the Court said, "but the decisions do not sustain this proposition. Where the means employed to carry the conspiracy into effect have been made unlawful by statute, as in the present case, such detail and precision are not required; it will be sufficient to make the charge substantially in the words of the statute." And it was further said: "If the defendants or any of them should consider the charges presented in this indictment as too vague and indefinite, the Court might order the attorneys of the United States to furnish a bill of particulars. That is the general practice, at present, both in England and this country."

The counsel for the defendants subsequently moved for a bill of particulars, copies of papers, letters, etc., and on refusing the motion, the Court said: "The decision of the Supreme Court of the United States in the case of Cruikshank is so reasonable in itself, and is such absolute authority with this Court that I propose to follow it implicitly as far as it leads. I interpret the doctrine laid down there to be about this: that if an indictment for a conspiracy does not specifically set forth and show that the object of the conspiracy is a legal crime, it should set forth particularly the means intended to be employed by the conspirators, and show that those means are criminal; or, in other words, that an indictment which charges generally that the defendants conspired to commit a fraud, without showing that the particular fraud is indictable, is a bad indictment. There is another branch of that doctrine, which is a corollary of the principle just stated, and it is that, if the indictment charged a conspiracy to effect an indictable offence, the indictment is good, although no overt act is set forth. In other words, where a legal offence

is charged it is not necessary to set forth any overt acts done in pursuance of the conspiracy.

Those are the two branches of the doctrine which I think is set forth in the decision in the *United States v. Cruikshank*, and they are the same doctrine that was maintained and held in the case of *The People v. Mather*,<sup>1</sup> *Lambert v. The People*,<sup>2</sup> *The People v. Eckford*.<sup>3</sup> These doctrines must be the rule of this Court. \* \* \* \* So far as concerns offences against the Government of the United States as distinguished from offences against individuals, section 5440 of the Revised Statutes of the United States introduces a new principle into the law, and it goes beyond the doctrine laid down in the *United States v. Cruikshank*. It requires that even where the indictment does charge a conspiracy, the object of which is the commission of a penal act, indictable in itself, that is not sufficient. It requires further, that some act should be done in pursuance of the conspiracy. Now, in that respect, this act goes beyond the decision in *United States v. Cruikshank*, because the doctrine there was that where the indictment was for a conspiracy to commit an act criminal in itself, it need not specify the means, it need not set out the means. But here, under this statute, and the cases falling within it, although the charge may be of a conspiracy to commit a crime against the United States, it is necessary to show that one or more acts were done by some of the conspirators in pursuance of the conspiracy. The decision in the *United States v. Cruikshank* takes no notice of this section 5440. It was not necessary that the Court should take notice of it in that case. The rule then for the Court on the present occasion is the section 5440. The indictment in this case, as was shown on a former occasion, so far as the conspiracy was concerned, is altogether sufficient in charging a criminal offence against the United States. The question now is whether it is sufficient in setting out the specific acts which were done by these alleged conspirators, or some of them, in pursuance of the conspiracy. Now, the motion for a bill of particulars calls upon the court to direct the United States attorneys to furnish a bill of particulars with regard to certain acts said to have been done, and which the motion alleges are not set out with sufficient precision and clearness to fulfil the purposes of a criminal in-

<sup>1</sup> *United States v. Mather*, 4 Wendell, 229.

<sup>2</sup> *Lambert v. The People*, 9 Cowan, 598.

<sup>3</sup> *People v. Eckford*, 7 Cowan, 535.

dictment. One of these acts is, that certain of these coconspirators procured petitions and letters to be falsely signed with the names of fictitious persons, and forwarded to the Post Office Department for the purpose of effecting the object of the conspiracy, without setting out any petition or letter, or referring to any fictitious name in particular, or describing, with clearness and precision, in what respect the petitions and letters were false, fraudulent and forged. I think it is necessary to do that. I think that in setting out the act done in pursuance of the conspiracy, it is necessary to set it out with as much precision and accuracy as it would be to set out the instruments referred to in an indictment for forgery or libel. In that particular I think that this indictment is faulty, and there may be one or two other specifications and acts contained in the indictment which are subject to the same objection. But the indictment contains other averments in which numerous acts are set forth as done by one or other of the conspirators in carrying out the object of the conspiracy with all the precision, all the accuracy, all the clearness which are required in an indictment.

The question now arises whether it is necessary that the Court should call upon the prosecuting attorney of the United States to furnish a bill of particulars in regard to those allegations which are imperfect when the indictment contains sufficient statements of other acts done by one or more of the conspirators in pursuit of the common object.

It is clear that a single act, so set out with clearness and precision, done by one of the conspirators is sufficient to maintain the indictment; because, where there is an accumulation of distinct facts alleged in an indictment and the indictment is good, if one of those facts be proved, the indictment is not demurrable. The indictment may be supported, although it may be defective in regard to the manner in which some of the specifications are stated. Redundancy of statement is not fatal to an indictment, if enough be left to fulfil the requirements of the law. It is true, that should the case go to trial and no bill of particulars be furnished, covering the ground set out in the motion, the Court would refuse to admit evidence on the part of the government of overt acts—what are called overt acts—not sufficiently set forth. It would be obliged to confine the proof to the acts alleged in the indictment, which were sufficiently alleged or set out. I shall overrule therefore the motion in the

case for a bill of particulars. It is but fair, however, to all parties to say on this occasion that, although I regard the averments as respects those petitions and other documents of a like character as insufficient in the light of statements as to the overt act, it is possible that in connection with other facts which may be offered they might be evidence to sustain the charge of conspiracy."

The general principles established by the foregoing cases have been followed with greater or less strictness, some judges requiring greater formality and strictness of pleading than others. The case of *United States v. Martin*,<sup>1</sup> was that of a conspiracy to defraud a national bank. It was held that it must appear upon the face of the indictment that the persons named conspired together and entered into an unlawful agreement and combination; second, that they conspired to commit an offence against the laws of the United States; third, that one or more parties did some act to effect the object of said unlawful combination or agreement; and an indictment against the cashier of a national bank and another individual who was not an officer of the institution, for a conspiracy to abstract and embezzle the funds of the bank, was held to be good.

In *U. S. v. Sanche*,<sup>2</sup> it was held that an indictment that averred in any form of language that some act had been done to carry out the agreement, was sufficient. The question whether the act averred would tend to effect the object of the conspiracy or not, being merely a question of proof, was held proper matter for the consideration of a jury.

In *United States v. Boyden*,<sup>3</sup> it was said that the overt acts need not be alleged as having been done to "effect the object" of the conspiracy, although these are the words of the statute: It is enough to say that they were done in pursuance of the conspiracy, which are the usual words. This decision follows the rule established in New York and New Jersey, where the statutes require some act to be done to effect the object of the conspiracy. The indictments have followed the usual language, adopted in practice as indicated.

Another instructive case is that of *U. S. v. Watson*,<sup>4</sup>

<sup>1</sup> U. S. v. Martin, 4 Clifford, 156.

<sup>2</sup> U. S. v. Sanche, 7 Fed. Rep., 715.

<sup>3</sup> U. S. v. Boyden, 1 Lowell, 266.

<sup>4</sup> U. S. v. Watson, 17 Fed. Rep., 145. See also, U. S. v. Ulrich, 3 Dillon, 532; U. S. v. Rindskopf, 6 Bissel, 259; U. S. v. Babcock, 3 Dillon, 581; U. S. v. Graff, 14 Blatch., 382; U. S. v. Nun-

in which the frame of an indictment is elaborately discussed, and an information was quashed for insufficiency in the statement of overt acts done by one of the conspirators towards effecting the purpose of the conspiracy. The Revised Statutes of the United States require an overt act, and it was held that to sustain an information or indictment, there must be charged, not only an agreement to do an act which is made a crime by the laws of the United States, but also some act done by one of the conspirators towards effecting the purpose of the conspiracy.

Somewhat in conflict with this view is the case of *U. S. v. Dennee*,<sup>1</sup> where it was held that an indictment for conspiracy need not aver the means agreed upon for accomplishing it. The subject is still further discussed in the cases referred to in the note.<sup>2</sup>

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nemacher, 7 Bissel, 129; *U. S. v. Crafton*, 4 Dillon, 145; *U. S. v. Goldman*, 3 Woods, 188; *U. S. v. Britton*, 107 U. S., 655; *U. S. v. Miller*, 3 Hughes, 553.

<sup>1</sup> *U. S. v. Dennee*, 3 Woods, 47.

<sup>2</sup> *U. S. v. Mitchell*, 1 Hughes, 439; *U. S. v. Crosby*, 1 Hughes, 448; *U. S. v. Butler*, 1 Hughes, 458; *U. S. v. Walsh*, 5 Dillon, 58; *U. S. v. Bayer*, 4 Dillon, 407; *U. S. v. McKee*, 4 Dillon, 128; *U. S. v. Smith*, 2 Bond, 323; *U. S. v. Dustin*, 2 Bond, 332; *U. S. v. Cole*, 5 McLean, 544; *U. S. v. Burgess*, 3 McCreary, 278.

to become satisfied that they have been the results not merely of individual, but the products of concerted and associated action, which, if considered separately, might seem to proceed exclusively from the immediate agents to them; but which may be so linked together by circumstances, in themselves slight, as to leave the mind fully satisfied that these apparently isolated acts are truly parts of a common whole; that they have sprung from a common object, and have in view a common end. The adequacy of the evidence in prosecutions for a criminal conspiracy, to prove the existence of such a conspiracy, like other questions of the weight of evidence, is a question for the jury." This language, which leaves nothing to be added, was distinctly approved by the Supreme Court of Iowa in the case of *State v. Sterling*,<sup>1</sup> and in *Archer v. The State*,<sup>2</sup> the Supreme Court of Indiana, quoting the language of Wharton—"the actual fact of conspiring may be inferred, as has been said, from circumstances, and the concurring conduct of the defendants need not be directly proved, any joint action on a material point, or a collocation of independent but co-operative acts, by persons closely associated with each other, is held to be sufficient to enable the jury to infer concurrence of sentiment"<sup>3</sup>—held that a conspiracy may be proved by circumstantial evidence alone. "It must be recollect ed, the conspiracy is a matter of inference, deducible from the acts of the parties accused, done in pursuance of an apparent criminal purpose, in common between them, and which are rarely confined to one place."<sup>4</sup>

Order and mode of proof It is usual to begin by showing that the defendants all knew each other, or were in correspondence or communication, or were, in a certain sense, acquainted with each other, so as to show that a conspiracy between them is not improbable; and if to this there can be added evidence of consultations or private meetings between them, or letters or verbal messages, there is then a strong foundation for the evidence to be subsequently given of the overt acts of each of the defendants, in furtherance of the common design. Regularly, some

<sup>1</sup> *The State v. Sterling*, 34 Iowa, 443, (A. D. 1872.)

<sup>2</sup> *Archer v. The State*, 106 Ind., 426, (A. D. 1886); *Comm. v. Ridgway*, 2 Ash., (Pa.,) 247; *Comm. v. Corlies*, 3 Brewster, (Pa.,) 575.

<sup>3</sup> *Wh. Crim. Law*, 9th Edit., § 1398; *Wh. Crim. Ev.*, § 298.

<sup>4</sup> *Bishop Crim. Procedure*, 3d Edit., § 227. See also *Comm. v. Warren*, 6 Mass., 74; *Comm. v. Gillespie*, 7 S. & R., (Pa.,) 469; *Per Duncan, J.*, in *Comm. v. Gillespie*, *ut supra*. See similar language of *Grose, J.*, in *R. v. Brisac*, 4 East., 171.

foundation must be laid by proof, sufficient, in the opinion of the Court, to establish *prima facie* the fact of conspiracy, or proper to be laid before the jury as tending to establish such fact.<sup>1</sup> The reasons for this rule are best stated in the Queen's case,<sup>2</sup> where it was held that general evidence of an existing conspiracy may be received, in the first instance, as a preliminary step to that more particular evidence, by which it is to be shown that the individual defendants were guilty participators in such conspiracy; and that this is often necessary to render the particular evidence intelligible, and to show the true meaning and character of the acts of individual defendants. In such cases, the general nature of the whole evidence intended to be adduced should be opened to the Court; and if upon such opening it should appear manifest that no particular proof sufficient to affect the individual defendants is intended to be adduced, it would become the duty of the judge to stop the case *in limine*, and not to allow the general evidence to be received, so as to prevent the exciting of an unreasonable prejudice, and a waste of time.

The order of proof, however, may be varied, in the sound discretion of the Court, whenever the case can be developed more conveniently in that way. Such was the view of the Supreme Court of Maryland in the case of *Bloomer v. The State*,<sup>3</sup> and in a recent North Carolina case,<sup>4</sup> the Court reversed the order, and allowed proof of the guilt of the defendants to precede proof of the conspiracy, which was approved by the Supreme Court upon error, while in Arkansas it was said that the Court in its discretion, under peculiar and urgent circumstances, may dispense with the prior proof of the conspiracy—upon the undertaking of the State to produce it afterwards.<sup>5</sup> In other words, while in strictness, no evidence ought to be given of the acts of

<sup>1</sup> *State v. Jackson*, 82 N. C., 565; *People v. Brotherton*, 2 Green Cr. L. Rep., 444, S. C., 47 Cal., 388; *Lawson v. State*, 32 Ark., 220. In *Shields v. McKee*, 11 Bradwell, (Ill.), 188, it was said: "A conspiracy cannot be shown by showing acts of the conspirators done separately, but it must be shown as an independent fact, before the acts of one conspirator are admissible against the others for any purpose."

<sup>2</sup> Queen's case, 2 Brod. and Bing., 310.

<sup>3</sup> *Bloomer v. The State*, 48 Md., 521.

<sup>4</sup> *State v. Jackson*, 82 N. C., 565; *People v. Brotherton*, 2 Green Cr. L. Rep., 444, S. C., 47 Cal., 388; *U. S. v. Cole*, 5 McLean, 513; *Greenleaf on Evidence*, Vol. III., § 92, 13th Edit.

<sup>5</sup> *Lawson v. State*, 32 Ark., 220; *Browning v. State*, 30 Miss., 656; *Johnson v. State*, 29 Ala., 62.

Rule re-stated.

strangers to the record, in order to affect the defendants, until the fact of a conspiracy with them is first shown, or until at least a *prima facie* case is made out, either against them all, or against those who are affected by the evidence proposed to be offered, yet the Court may sometimes permit evidence to be given, the relevancy of which is not apparent at the time when it was offered, but which the State undertakes to render so by subsequent evidence.

Next step.

Acts and declarations of co-conspirators.

The next step in the order of proof, after general evidence of the conspiracy, is to show the connection of the defendants with the unlawful enterprise, and the overt acts of each, which, when done in pursuance of the concerted plan, become in contemplation of law the acts of all. The moment the connection of individuals in an unlawful enterprise has been shown, every act and every declaration of each member of the conspiracy, in pursuance of the concerted plan, or in reference to the common object, become the acts and declarations of all, and are, therefore, original evidence against each of them;<sup>1</sup> for each member of an unlawful conspiracy is a conspirator, and is responsible personally for every act of the conspiracy and for the acts and declarations of each member thereof, done by common consent and in furtherance of the illegal purpose, and also for such acts done in furtherance of the conspiracy not consented to beforehand, if assented to subsequently to their perpetration, whether the party charged was actually present or not when such act was done.<sup>2</sup> Nor is responsibility for the acts of co-conspirators limited to the acts of those indicted, for there may be members of a conspiracy outside of the jurisdiction of the trial Court, but whose par-

<sup>1</sup> Glory *v.* The State, 13 Ark., 236; Clinton *v.* Estes, 20 Ark., 216; Lawson *v.* The State, 32 Ark., 220; U. S. *v.* Goldberg, 7 Biss, 175; U. S. *v.* McKee, 3 Dill, 551; U. S. *v.* Mitchell, 1 Hughes, 439; Collins *v.* Comm., 3 S. & R. (Pa.), 222; Heine *v.* Comm., 10 Norris, (Pa.), 148; State *v.* Larkin, 49 N. H., 39; Page *v.* Parker, 40 N.H., 47; State *v.* Davis, N. C., 514; State *v.* George, 7 Ired. (N. C.), 321; Nevill *v.* State, 60 Indiana, 308; State *v.* Ross, 29 Mo., 32; State *v.* Soper, 16 Maine, 293; State *v.* Nash, 7 Iowa, 347; Frank *v.* The State, 27 Ala., 37; Solander *v.* The People, 2 Colorado, 48; State *v.* Simons, 4 Stroh, (S. C.), 266; People *v.* Saunders, 25 Mich, 119; State *v.* Arnold, 48 Iowa, 566; Hardin *v.* State, 4 Texas, App., 355; Adams *v.* People, 16 N. Y. S. C., 89; People *v.* Gorham, 16 Hun. (N. Y.), 193; Bloomer *v.* State, 48 Md., 521; Jones *v.* State, 64 Ind., 473; Comm. *v.* Scott, 123 Mass., 222; Hinchman *v.* Richie, Brightly's Rep. (Pa.), 159; Comm. *v.* Foering, 6 Pa. L. J. Rep., 29.

<sup>2</sup> U. S. *v.* Mitchell, 1 Hughes, 439; U. S. *v.* Butler, Ibid., 457; U. S. *v.* Crosby, Ibid., 448; U. S. *v.* Petersburg Judges, Ibid., 493; The above are the famous Ku Klux cases. State *v.* Anderson, 92 N. C., 732; Noyes *v.* State, 12 Vroom, (N. J.), 418.

ticipation in the work of those on trial makes proof of their acts admissible to charge the defendants. It makes no difference in guilt, if the motive of a party joining a conspiracy was not illegal, when he did join it, if he was afterwards aware of its illegality and still remained a member.<sup>1</sup> But if the acts and declarations of a conspirator with the accused are made in his absence, they are not admissible against him to prove either the body of the crime, or the existence of the alleged conspiracy, unless they either so accompany the execution of the common criminal intent as to become part of the *res gestae*, or in themselves tend to promote the common criminal object.<sup>2</sup> The acts and declarations of a conspirator to be admissible in evidence to charge his fellows must have been concomitant with the principal act, and so connected with it as to constitute a part of the *res gestae*.<sup>3</sup>

But when the declarations are not made during the progress of the conspiracy, but afterwards, in a mere rehearsal of rehearsal to a third party of what had been done previously, they are not evidence.<sup>4</sup> For after the offence has been committed, the declarations are not made in furtherance of the common design;<sup>5</sup> but amount to a mere narrative of past events.<sup>6</sup> When made in the absence of the defendants, after the transaction is over, they are incompetent evidence to prove the conspiracy against any one except the party making them.<sup>7</sup> And where the confession is of a party not included in the indictment, it is the safer rule not to hear such evidence, to implicate the defendants, until *prima facie* proof has been given to connect such party with the conspiracy;<sup>8</sup> but when the facts proved are insufficient to establish a conspiracy between the prisoner and a third person to

<sup>1</sup> Ibid.

<sup>2</sup> Clawson v. State, 14 Ohio, State 234.

<sup>3</sup> State v. Larkin, 49 N. H., 39.

<sup>4</sup> Heine v. Comm., 10 Norris, (Pa.), 148; State v. Dean, 13 Ired. (N. C.), 63; Ricks v. State, 19 Tex. App., 308.

<sup>5</sup> State v. George, 7 Ired. (N. C.), 329; State v. Fredericks, 85 Mo., 145.

<sup>6</sup> Solander v. People, 2 Colorado, 48; See also Mask v. State, 32 Miss., 405; Curry v. Kurtz, 33 Miss., 24; Amer. Iron Mountain Co. v. Evans, 27 Mo., 552.

<sup>7</sup> State v. Earwood, 75 N. C., 210; Ricks v. State, 19 Tex. App., 308; State v. Dean, 13 Ired., 63; State v. Thibean, 30 Vt., 100; Thompson v. Comm., 1 Met. Ky., 13; Patton v. State, 6 Ohio State, 467; State v. Simons, 4 Strohhart, 266; Lynes v. State, 36 Miss., 617; State v. Ross, 29 Mo., 32; Hunter v. Comm., 7 Gratton, 641.

<sup>8</sup> U. S. v. Cole, 5 McLean, 513.

commit the offence, the declarations of such third person, made in the absence of the prisoner, are not admissible to prove his guilt.”<sup>1</sup>

Concise statement of law Archbold<sup>2</sup> may be accepted as a correct epitome: by Mr. Archbold. “Wherever the writings or words of any of the parties

charged with or implicated in a conspiracy can be considered in the nature of an act done in furtherance of the common design, they are admissible in evidence, not only as against the party himself, but as proof of an act from which *inter alia* the jury may infer the conspiracy itself; wherever the writings or words of such a party amount to an admission merely of his own guilt, and cannot be deemed an act done in furtherance of the common design, in that case they can be received in evidence merely as against the party, and not as evidence of the conspiracy, and in strictness ought not to be offered in evidence until after the conspiracy had been proved *aliunde*; but wherever the writings or words of such a party, not being in the nature of an act done in furtherance of the common design, merely tend to implicate others, and not to accuse himself, they ought not to be received in evidence for any purpose.”

**Participation must be active.** While it is not necessary to show an actual agreement,<sup>3</sup> nor even that the means were predetermined, as is well illustrated in *State v. Cardoza*,<sup>4</sup> yet there must be active participation in the conspiracy, or its work, to implicate the defendants; a purely passive acquiescence,

**Withdrawal must be explicit.** a mere presence on the occasion of the conspiracy, or silent knowledge is insufficient.<sup>5</sup> Should one of the conspirators withdraw, it would seem that such withdrawal ought to be explicit, and notice be given to co-conspirators either by words or unequivocal acts.<sup>6</sup> Should one of the defendants be the dupe of another, it is proper for him to show that he was misled by representations made to him, and that he really acted in good faith.

A co-defendant may show that he is the dupe of others. For this purpose the correspondence between the parties is admissible.<sup>7</sup> Nor can A be convicted of conspiracy with B to commit a crime, when B only feigned

<sup>1</sup> *Williamson v. Comm.*, 4 Gratt. (Va.), 547.

<sup>2</sup> Archbold's Crim. Prac. & Pl., Waterman's notes, Vol. II, 1059, \*621-22.

<sup>3</sup> *U. S. v. Sacia*, 2 Fed. Rep., 754; *U. S. v. Goldberg*, 7 Biss., 175; *Mussel Slough case*, 5 Fed. Rep., 680.

<sup>4</sup> *State v. Cardoza*, 11 S. C. R., 196.

<sup>5</sup> *Evans v. People*, 90 Ill., 984; *Miles v. State*, 58 Ala., 390; *People v. Leith*, 52 Cal., 251; *U. S. v. Johnson*, 26 Fed. Rep., 682.

<sup>6</sup> 47 Conn.

<sup>7</sup> *Rex. v. Whitehead*, 1 C. & P., 67.

a purpose to assist in its commission, his intention being to draw A on.<sup>1</sup>

The evidence in support of a charge of conspiracy is in a certain sense transitory, for if an agreement be entered into in one county, and the conspirators go into another to execute their plans of mischief, and there commit an overt act, they may be punished in the latter county, without any evidence of an express renewal of the agreement; such overt act of any one of the conspirators, in furtherance of the common design, is considered in law as a renewal, or rather a continuance, of the original agreement of all the conspirators. The venue of the indictment may be laid in the county where the agreement was entered into, or where an overt act was done by any of the conspirators in furtherance of the common design.<sup>2</sup> In the Star Route Cases the sweep of the crime and its execution transcended the limits of States and ranged through a vast territory.<sup>3</sup> The venue of the offence of conspiracy must be proved, yet evidence of what was done beyond the jurisdiction is competent evidence of any act within the jurisdiction, which the law treats as a renewal of the conspiracy and as a sufficient proof of venue.<sup>4</sup>

In general, much will depend upon the form of the indictment as to what evidence must be introduced. Where the conspiracy was to do an act in itself unlawful, and the means are not set forth, if the conspiracy be unexecuted, it is not necessary to do more than to give evidence from which the fact of conspiracy may be inferred; but if the conspiracy was executed and carried out to the full accomplishment of its object, it is necessary, especially in the case of conspiracies to cheat and defraud, to state and prove what was done, and the persons who were thereby injured and defrauded; and if property was wrongfully obtained to state and prove what and whose property it was. So where the conspiracy is to do an act indifferent in itself, but the means resorted to are illegal, it is here that the means employed must be charged to be illegal and proved to be such upon trial.<sup>5</sup> Where there are par-

<sup>1</sup> Woodworth *v.* State, 20 Tex. App., 375.

<sup>2</sup> People *v.* Mather, 4 Wend., 229; Collins *v.* Comm., 3 S. & R., (Pa.) 220; People *v.* Ward, 1 Johns, 66; Noyes *v.* State, 12 Vroom, (N. J.), 418. Upon the effect of acts of renewal see Comm. *v.* Bartilson, 4 Norris, (Pa.) 486; Rex *v.* Bowes, cited in 4 East, 171.

<sup>3</sup> The Star Route Cases, Washington, 1882.

<sup>4</sup> Comm. *v.* Corlies, 3 Brewster, 575.

<sup>5</sup> Greenleaf on Evidence, 3 Vol. 13 Edit., § 95.

ticular allegations in the indictment, the evidence must be confined to them. Thus it was ruled in Massachusetts<sup>1</sup> that an averment in an indictment for a conspiracy, that the defendants conspired to defraud A, is not supported by proof that they conspired to defraud the public generally, or any individual whom they might meet and be able to defraud; and in *State v. Walker*,<sup>2</sup> it was held that in an indictment for a conspiracy to prosecute a person who was not guilty, it was inadmissible to prove that the defendants prosecuted other persons who were guilty. But it is admissible, in proof of a conspiracy to commit a particular fraud, to show a like fraud, committed by the alleged conspirators, about the same time upon a third person.<sup>3</sup>

**Effect of acquittal or death of one of the parties.**

As conspiracy is a joint offence, it follows that if two only be charged, and one be acquitted, the other must be acquitted also;<sup>4</sup> and if one of several defendants charged with this offence be acquitted, the record of his acquittal is admissible in evidence, in favor of another of the defendants subsequently tried.<sup>5</sup> But if two be indicted, and one die before trial; or if three be indicted, and one be acquitted and the other die, the third cannot avail himself of it.<sup>6</sup> If the charge be that one indicted conspired with other persons to the jurors unknown, it is not matter of exception that he alone is indicted.<sup>7</sup>

**Husband and wife cannot be witnesses for each other.**

Nor against each other.

Except where some statute has modified the law, a wife cannot be a witness in a case where a joint charge is jointly tried against her husband and others; and although in cases of other offences upon a separate trial, she would be a competent witness for the other co-defendants, and to give them the benefit of her testimony separate trials will be awarded by the Court, yet in a case of criminal conspiracy a separate trial will not be awarded.<sup>8</sup> Nor is the wife a competent witness against

<sup>1</sup> *Comm. v. Harley*, 7 Metc., Mass. 506; *Comm. v. Kellogg*, 7 *Cush.*, 473; see also *State v. Hadley*, 54 N. H., 224; *Randolph v. State*, 14 Ind., 232.

<sup>2</sup> *State v. Walker*, 32 Me., 195.

<sup>3</sup> *Luckey v. Roberts*, 25 Conn., 486; *People v. Saunders*, 25 Mich., 119; Compare *Comm. v. Eastman*, 1 *Cush. (Mass.)*, 189.

<sup>4</sup> *Comm. v. Manson*, 2 *Ashm. (Pa.)* 31; *State v. Jackson*, 7 S. C., 283; *Johnson v. State*, 3 *Texas App.*, 590.

<sup>5</sup> *State v. Tom*, 2 *Dev. (N. C.)* 569.

<sup>6</sup> *The People v. Olcott*, 2 *Johns. C. (N. Y.)* 301.

<sup>7</sup> *People v. Mather*, 4 *Wend.*, 229.

<sup>8</sup> *Comm. v. Manson*, 2 *Ashm. (Pa.)* 31; *Rachels v. State*, 51 Ga., 374; *State v. Burlingham*, 15 Maine, 104; *U. S. v. Addatte*, 6 *Blatch.*, 76.

her husband.<sup>1</sup> A telegram from the wife of one of the defendants in an action for conspiracy, not written or sent by either of them, is inadmissible as evidence against them, and as the declaration of the wife, it was said, it could not affect even her husband.<sup>2</sup>

In Kentucky it has been held, where an indictment charges a conspiracy, and the proof sustains the allegation, a co-defendant will not be permitted to testify in behalf of the defendant on trial.<sup>3</sup>

As husband and wife are regarded in law as one person, proof that they are man and wife is a complete defence to a charge of conspiracy between a man and a woman, unless indeed the conspiracy were concocted before their marriage.<sup>4</sup> But indictments have been sustained against husband and wife where others were indicted jointly with them.<sup>5</sup>

An interesting case, standing alone, was where, in a *Exceptions*, conspiracy to inveigle a young girl from her mother's house by false pretences, and by procuring the marriage ceremony to be recited between her and one of the defendants, she being in a state of intoxication brought about by the acts of the accused, it was ruled that she was a competent witness; and the jury were instructed to reject her evidence should they find in favor of the marriage, the Court being unwilling to determine the validity of the marriage so as to exclude her testimony. In such a case, evidence will be received of a carrying her off by force, and threats subsequent to the alleged marriage.<sup>6</sup>

<sup>1</sup> *Comm. v. Robinson*, 1 Gray, 555; *Comm. v. Marsh*, 1 *Lead. Crim. Cases*, 124; *Comm. v. Easland*, 1 Mass., 15; *Pullen v. People*, 1 *Doug.*, Mich., 48. See *State v. Anthony*, 1 *McCord*, 285; *State v. Jolly*, 32 Amer. Dec., 656; *Burnett v. Burkhead*, 76 Amer. Dec., 358; *Mask v. State*, 32 Miss., 405. But see *State v. Bradley*, 9 Rich., 168; *State v. Waterman*, 1 Nev., 543. Under Mich. statute, *Morissey v. People*, 11 Mich., 327.

<sup>2</sup> *Bedford v. Sanner*, 40 Penna. St., 9.

<sup>3</sup> *Cummins v. Comm.*, 81 Ky., 465; *Lisle v. Comm.*, 82 Ky., 250.

<sup>4</sup> *Rex v. Robinson*, 1 *Leach C. C.*, 37.

<sup>5</sup> *Comm. v. Wood*, 7 *Law Rep.*, 58; *Rex v. Locker*, 5 *Esp.*, 107.

<sup>6</sup> *Resp. v. Hevice*, 2 *Yeates*, (Pa.,) 114.

## CHAPTER VI.

## JUDGMENT AND SENTENCE, AND HEREIN OF MERGER.

Ancient judgment.

The ancient judgment pronounced upon those convicted upon indictment of the crime of conspiracy was that known to the law as the *villainous judgment*. It was that they should lose their free law, that is, that they should never serve upon a jury, or appear as witnesses in any case; that they should never appear but by attorney; that their lands, chattels and goods should be seized into the king's hands, their trees cut down, and their bodies imprisoned.<sup>1</sup>

The reason of the judgment was said to be because the offenders had conspired the shedding of innocent blood, and that, too, under a pretence of justice, by a course of law, which is made for the protection of the innocent.

But there have been other judgments given against such offenders, as for instance:

An information was brought by one Miller, of Kent, against an attorney and another, for a conspiracy, maliciously to take away his life, by accusing him of breaking open a trunk and taking out money and a lease, for which they indicted Mr. Miller at the assizes; it was found *ignoramus*, the conspiracy was proved, and the sentence was, that the attorney should be degraded, and cast over the bar; that both should lose their ears, and be marked in the face with the letter C; to stand on the pillory, with papers of their offences, to be whipped, and each fined £500. This sentence was executed on them.<sup>2</sup>

So, where two conspired to accuse Sir Anthony Ashley for a murder done sixteen years before, Cantrell was to be the accuser, and Sir James Creighton articed with him that he should have a sixth part of Sir Anthony's estate, and that he would beg the whole of the king. Cantrell agreed, and procured one Smith, who was servant to Sir Anthony, to accuse both his master and himself of putting poison into drink, which his master commanded him to carry to one Rice, which he did and so poisoned him. For this fact he caused his master and himself to be indicted, but afterwards disclosed

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<sup>1</sup> Stampf Pl. Coron., 175 b., 3 Inst., 143.

<sup>2</sup> Anno. 11, Jac., 1 Godb., 205.

the conspiracy, and Creighton was fined £1,000 and committed; another of the defendants was fined £300 and sentenced to stand in the pillory, and was burnt with a hot iron on both cheeks with the letters F and C.<sup>1</sup>

The modern judgment is that of fine and imprisonment, and conspiracy being ranked in most of the States as a misdemeanor, although in some it is a statutory felony, the term of imprisonment rarely exceeds two years. For particular information reference must be made to the statutes of each State.

There is one matter, however, which demands attention. If the indictment charging the conspiracy sets forth an overt act, and if the overt act is pleaded as a constituent misdemeanor, then, in that case, upon a general verdict of guilty, the Court may, in its judgment, sentence for the constituent misdemeanor. Thus, if the limit of the law for conspiracy is two years, and for the constituent misdemeanor, it may be more, then although the indictment consists of a simple count for conspiracy, with the overt act properly pleaded in it for a constituent misdemeanor, the Court can and may sentence for the constituent misdemeanor. This was illustrated by Mr. Ker in his argument for the Government in the Star Route Case. He referred to Comm. v. Westervelt,<sup>2</sup> where the defendants were charged with conspiracy to abduct Charlie Ross. The overt act was pleaded that they actually did abduct the child. Upon trial Westervelt was convicted. After conviction the matter was elaborately argued, and it was held that the Court was right to sentence him for a constituent misdemeanor, and although under the law of Pennsylvania, for a conspiracy a party could have been sentenced to only two years' imprisonment, yet for the abduction the sentence was for seven years. The case was taken to the Supreme Court which refused an allocatur, and the judgment was affirmed.

Another point to be observed is the doctrine of merger, by which is meant, that where a conspiracy, which is a misdemeanor, consists of an agreement to commit a felony and is actually executed, the misdemeanor merges in the felony, but where there is a conspiracy to commit a misdemeanor only, there, even though the conspiracy be executed, there is no merger because the two crimes are of the same rank.

In case of  
constituent  
misde-  
meanor.

<sup>1</sup> Sir Anthony Ashley's case, 12 Co., 90.

<sup>2</sup> Comm. v. Westervelt, Wharton's Prec. of Pleas. & Indict. 3 Ed; Wharton's Am. Cr. L. 9 Ed.; S. C., 11 Phila. Rep., 461.

A difficulty, however, was started in Massachusetts, in *Comm. v. Kingsbury*,<sup>1</sup> which had it been generally recognized would have destroyed the crime of conspiracies to commit misdemeanors. A conspiracy, it was said, to commit either a misdemeanor or felony, merges in the overt act, when such overt act appears to be consummated. The case before the Court was one of a conspiracy to commit a felony, and as no one ever doubted that in such case the attempt merged in the consummation, the principle announced by the Court was properly applied. But to extend it to cases of misdemeanors is in conflict with the English text-books, where such a doctrine is never broached, as well as with the books of precedents, where forms constantly occur of conspiracies to commit misdemeanors to which the overt act is attached.

The true doctrine is stated by Judge Marcy in the case of *People v. Mather*,<sup>2</sup> "it is supposed that a conspiracy to commit a crime is merged in the crime where the conspiracy is executed. This may be so where the crime is of a higher grade than the conspiracy, and the object of the conspiracy is fully accomplished; but a conspiracy is only a misdemeanor, and where its object is only to commit a misdemeanor, it cannot be merged. Whenever crimes are of an equal grade there can be no technical merger. This Court had this question under consideration in the case of Bruce, and there intimated an opinion that a conspiracy to commit a misdemeanor was not merged in the misdemeanor when actually committed."

The same doctrine prevails in Massachusetts, Maine, Michigan, Vermont, and Pennsylvania.<sup>3</sup>

It is however intimated by Mr. Wharton that in those States where conspiracy is made a statutory felony great difficulty may arise in trying misdemeanors, in all cases where two or more persons are proved to have joined in the commission of the offence. If there was joint action, he asks, must there not have been joint concert, and if so, must there not have been a conspiracy, and is not the misdemeanor merged?

The query, although doubtless reasonable, seems theoretical rather than practical, as no adjudged case upon the subject has arisen.

<sup>1</sup> *Commonwealth v. Kingsbury*, 5 Mass., 106.

<sup>2</sup> *People v. Mather*, 4 Wend N. Y., 265.

<sup>3</sup> See *Comm. v. Drum*, 19 Pickering, 479; *Comm. v. Goodhen*, 2 Metc., 193; *State v. Murray*, 15 Maine, 100; *1 Duvall*, 4; 48 Maine, 218; *People v. Richards*, 1 Mich., 216; *State v. Noyes*, 25 Mich.; *Hartman v. Comm.*, 5 Barr, 60; *Comm. v. Delany*, 1 Grant, 224.

## APPENDIX I.

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### REVISED STATUTES OF THE UNITED STATES RELATING TO CONSPIRACY.

THE TWO FOLLOWING SECTIONS RELATE TO JURISDICTION.

*Title XIII.—The Judiciary.—Ch. 3.*

Sec. 563. The District Courts shall have jurisdiction Jurisdiction as follows:

*First.* Of all crimes and offences cognizable under the authority of the United States committed within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section fifty-four hundred and twelve. Title "Crimes." [See §§ 4300—4305.]

\* \* \* \* \*

*Eleventh.* Of all suits authorized by law to be Suits on account of any injury to his person or property, or of juries by conspirators in the United States, by any act done in furtherance of certain cases. any conspiracy mentioned in section nineteen hundred 1871, c. 22, § and eighty-five. See title "Civil Rights." [§ 1980.]<sup>1</sup> <sup>2, v. 17, p. 13.</sup>

*Title XIII.—The Judiciary.—Ch. VII.*

Sec. 629. The Circuit Courts shall have original Jurisdiction jurisdiction as follows:

\* \* \* \* \*

*Seventeenth.* Of all suits authorized by law to be Suits on account of any injury to his person or property, or of the deprivation of any right juries by conspirators in the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty. Title "Civil Rights."

Sec. 641. Provides for removal of causes against persons denied any civil right.<sup>2</sup>

336.

<sup>1</sup> Section 1980 of the present revision.

<sup>2</sup> The third section of the Act of the 9th of April, 1866, commonly called "The Civil Rights Bill," which is found in Sec. 641 of the Revised Statutes, gave the District Courts of the

*Title XIII.—The Judiciary.—Ch. II.*

Writs of error and appeals without reference to amount. Sec. 690. A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned, without regard to the sum or value in dispute.

\* \* \* \* \*

Suits for injuries by conspirators against civil rights. *Fifth.* Any final judgment of a Circuit Court or of any District Court acting as a Circuit Court, in any civil action, brought by any person on account of injury to his person or property by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty. Title "Civil Rights."<sup>1</sup>

20th April, 1871, c. 22, § 2, v. 17, p. 13.

9th April, 1866, c. 31, § 10, v. 14, p. 29.

THE FOLLOWING SECTIONS RELATES TO CONSPIRACIES BY OFFICERS OF THE ARMY AND NAVY TO DEFRAUD THE UNITED STATES :

*Rev. Stat., U. S. 2d Ed., 1878; Title XIV.—The Army.—Ch. 5.*

Certain crimes of fraud against the United States. 2d March, 1863, c. 67, § 1, v. 12, p. 696.

Sec. 1342, Art. 60. Any person in the military service of the United States who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent, or \* \* \* who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or \* \* \* shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge.

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United States within their respective districts, *exclusively* of the Courts of the several States, cognizance of all crimes and offences committed against the provisions of that act, and also *concurrently* with the Circuit Courts of the United States, of all cases, civil and criminal, affecting persons who were denied, or who could not enforce in the Courts of the State or locality where they might be, any of the rights secured to them by the act. See *Blyew v. U. S.*, 13 Wall., 581, where the Supreme Court of the United States held that jurisdiction could not be entertained of a case where a negro had been murdered by white men, and the only witnesses were black, who under the laws of Kentucky were competent witnesses only in the case of the Commonwealth for or against a slave, negro, or Indian, or in a civil case to which only negroes or Indians are parties, on the ground that a criminal prosecution is not to be considered as *affecting*, within the meaning of the statute, mere witnesses in the case, or persons not in existence. The only persons to be *affected* are the government and the persons indicted. The *U. S. v. Ortega*, 11 *Wheaton*, 467, was affirmed.

<sup>1</sup> See *Cooper, Ex. v. Omohundro*, 19 *Wallace*, 65.  
(4908)

And if any person, being guilty of any of the offences aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent, as if he had not received such discharge nor been dismissed.

*Title XV.—The Navy.—Ch. 10.*

Sec. 1624, Art. 14. Fine and imprisonment, or such Certain other punishment as a court-martial may adjudge, shall crimes of be inflicted upon any person in the naval service of fraud against the United States— \* \* \* who enters into any States. agreement or conspiracy to defraud the United States 2d March, by obtaining, or aiding others to obtain, the allowance 1863, c. 67, § or payment of any false or fraudulent claim; or, \* \* \* 1, v. 12, p. 696 and if any person, being guilty of any of the offences Agreement to described in this article while in the naval service, obtain pay- receives his discharge, or is dismissed from the service, claim. he shall continue to be liable to be arrested and held 2d March, for trial and sentence by a court-martial, in the same 1863, c. 67, § manner as if he had not received such discharge or been 2, v. 12, p. 697. dismissed.

THE FOLLOWING SECTIONS RELATE TO CONSPIRACIES  
AGAINST CIVIL RIGHTS :

*Title XXIV.—Civil Rights.*

Sec. 1980. First. If two or more persons in any Conspiracy. State or Territory conspire to prevent, by force, intimi- 31st July, dation, or threat, any person from accepting or holding 1861, c. 33, v. any office, trust, or place of confidence, under the United 12, p. 284. States, or from discharging any duties thereof ; or to 20th April, induce by like means any officer of the United States 1871, c. 22, § 2, v. 17, p. 13. to leave any State, district, or place, where his duties as 1st March, an officer are required to be performed, or to injure him 1875, c. 114, § 2, v. 18, p. 336. in his person or property on account of his lawful dis- charge of the duties of his office, or while engaged in the lawful discharge thereof ; or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties ;

Second. If two or more persons in any State or Ter- ritory conspire to deter, by force, intimidation, or threat, any party or witness in any Court of the United States from attending any such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property

on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner towards or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. [See §§ 563, 629.]

*Title XXIV.—Civil Rights.*

Action for  
neglect to  
prevent con-  
spiracy.

Sec. 1981. Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the

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commission of the same, objects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. [See § 629.]

THE FOLLOWING SECTIONS RELATE TO CONSPIRACIES  
AGAINST THE INTERNAL REVENUE:

*Title XXXV.—Internal Revenue.—Ch. I.*

Sec. 3169. Every officer or agent appointed and acting under the authority of any revenue law of the United States,

Officers of internal revenue guilty, &c.

20th July, 1868, c. 186, § 98, v. 15, p. 165.

*Fourth.* Who conspires or colludes with any other person to defraud the United States.

*Tenth.* \* \* \* Shall be dismissed from office and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars, and be imprisoned not less than six months nor more than three years. The Court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One-half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the Court. [See § 5484.]<sup>1</sup>

<sup>1</sup> Under the above see: U. S. v. McDonald, 3 Dill, 543; U. S. v. McKee, 3 Dill—546, 551; U. S. v. Babcock, 3 Dill, 566, 571, 577, 581.

THE FOLLOWING SECTION RELATES TO CONSPIRACIES IN  
RELATION TO DEBTS DUE BY OR TO THE UNITED  
STATES:

*Title XXXVI.—Debts Due by or to the United States.*

Liability of persons making false claims against United States.  
2d March, 1863, c. 67, § 3, v. 12, p. 698.

Sec. 3490. Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, title "Crimes," shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.

THE FOLLOWING SECTION RELATES TO INSURRECTION:

*Title LXIX.—Insurrection.*

Power to suppress insurrection in violation of civil rights.  
20th April, 1871, c. 22, § 3, v. 17, p. 14.

Sec. 5299. Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State, so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities; and the constituted authorities of such State are unable to protect, or, from any cause, fail in, or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws, to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia, or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations.

THE FOLLOWING SECTION RELATES TO SEDITIOUS CONSPIRACIES :

*Title LXX.—Crimes.—Ch. II.*

Sec. 5336. If two or more persons in any State or Seditious Territory conspire to overthrow, put down, or to de-<sup>31st July,</sup> stroy by force, the Government of the United States, or <sup>1861, c. 33, v.</sup> to levy war against them, or to oppose by force the au-<sup>12, p. 284, to</sup> thority thereof; or by force to prevent, hinder or delay April, 1871, the execution of any law of the United States, or by <sup>c. 22, § 2, v.</sup> force to seize, take or possess any property of the <sup>17, p. 13.</sup> United States contrary to the authority thereof; each of them shall be punished by a fine of not less than five hundred dollars and not more than five thousand dollars; or by imprisonment, with or without hard labor, for a period of not less than six months, nor more than six years, or by both such fine and imprisonment. [See §§ 5518, 5520.]<sup>1</sup>

THE SOLLOWING SECTION RELATES TO CONSPIRACIES TO CAST AWAY VESSELS :

*Title LXX.—Crimes.—Ch. III.*

Sec. 5364. Every person who, on the high seas, or within the United States, wilfully and corruptly con-<sup>Conspiracy to</sup> spires, combines, and confederates with any other per-<sup>cast away</sup> son, such other person being either within or without <sup>vessel.</sup> the United States, to cast away or otherwise destroy <sup>3d March,</sup> 1825, c. 65, § any vessel, with intent to injure any person that may <sup>23, v. 4, p.</sup> have underwritten, or may thereafter underwrite, any <sup>122.</sup> policy of insurance thereon, or on goods on board there-<sup>of,</sup> or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; and every person who, within the United States, builds or fits out, or aids in building or fitting out, any vessel with intent that the same be cast away or destroyed with the intent hereinbefore mentioned, shall be punished by a fine of not more than ten thousand dollars, and by im-<sup>2</sup> prisonment at hard labor not more than ten years.<sup>2</sup>

<sup>1</sup> Under the above see, *In re Impaneling and Instructing the Grand Jury*, 26 Fed. Rep., 749, A. D. 1886. A conspiracy to drive the Chinese out of the United States.

<sup>2</sup> Under the above see U. S. v. Cole, 5 McLean, 513; U. S. v. Hand, 6 McLean, 274.

THE FOLLOWING SECTIONS RELATE TO CONSPIRACIES  
AGAINST THE ADMINISTRATION OF JUSTICE:

*Title LXX.—Crimes.—Ch. IV.*

Conspiring to intimidate party, witness or juror. 20th April, 1871, c. 22, § 2, v. 17, p. 13. Sec. 5406. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any Court of the United States from attending such Court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such Court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror, each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment with or without hard labor, not less than six months nor more than six years, or by both such fine or imprisonment. [See §§ 1980, 1981.]

Conspiracy to defeat enforcement of the laws. 20th April, 1871, c. 22, § 2, v. 17, p. 13. Sec. 5407. If two or more persons in any State or Territory conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws, each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment. [See §§ 1977, 1991, 2004, 2010, 5508, 5510.]

THE FOLLOWING SECTION RELATES TO CONSPIRACIES TO DEFRAUD THE UNITED STATES:

*Title LXX.—Crimes.—Ch. V.*

Making or presenting false claims. Sec. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department or officer thereof, etc., \* \* \* or

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who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining, or aiding to obtain the payment or allowance of any false or fraudulent claim, or, etc. \* \* \* Every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars. [See §§ 3490, 3491.]

THE FOLLOWING SECTIONS RELATE TO THE CRIME OF CONSPIRACY GENERALLY:

*Title LXX.—Crimes.—Ch. V.*

Sec. 5440. If two or more persons conspire either to commit any offence against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not more than two years.<sup>1</sup> All parties to conspiracy liable to penalty if one does any act. 2d March, 1867, c. 169, § 30, a. 14, p. 484.

*Supplement to the Rev. Stat. of the U. S., Vol. I., 1874—May 17, 1879.*  
1881, p. 484. 21 Stat. L., 4.

Chap. 8. An Act to amend section fifty-four hundred and forty of the revised statutes. All parties to conspiracy liable to penalty if one does any act.

All parties to conspiracy to defraud United States liable to penalty if any one does any act, etc.

*Be it enacted, &c.,* That section fifty-four hundred and forty of the Revised Statutes of the United States of America be amended so as to read as follows:

If two or more persons conspire either to commit any offence against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten

Substitute for R. S., § 5440.

<sup>1</sup> Under above see U. S. v. Boyden, *et al.*, 1 Low., 266; U. S. v. Hammond, 2 Woods, 197; U. S. v. Donau, 11 Blatch, 168; U. S. v. Fehrenback, 2 Woods, 175.

thousand dollars, or to imprisonment of not more than two years, or to both fine and imprisonment in the discretion of the Court.<sup>1</sup> (May 17, 1879).

**THE FOLLOWING SECTIONS RELATE TO CONSPIRACIES TO INTIMIDATE VOTERS OR CITIZENS IN THE EXERCISE OF CIVIL RIGHTS:**

*Rev. Stat. U. S., 2d Ed., 1878. Title LXX.—Crimes.—Ch. VII.*

Preventing, &c., citizens from voting. 31st May, 1870, c. 114, § 4, v. 16, p. 141. 3d March, 1875, c. 145, § 18, pp. 479, 480. Sec. 5506. Every person who, by any unlawful means, hinders, delays, prevents, or obstructs, or combines and confederates with others to hinder, delay, prevent or obstruct, any citizen from doing any act required to be done to qualify him to vote, or from voting at any election in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial sub-division, shall be fined not less than five hundred dollars, or be imprisoned not less than one month nor more than one year, or be punished by both such fine and imprisonment. [See §§ 2004, 2010.]<sup>2</sup>

*Title LXX.—Crimes.—Ch. VII.*

Conspiracy to injure or intimidate citizens in the exercise of civil rights. 31st May, 1870, c. 116, § 6, v. 16, p. 141. Sec. 5508. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the high-

<sup>1</sup> Under above see *United States v. Boyden*, 1 Lowell, 266; *United States v. Donau*, 11 Blatch, 168; 16 Blatch, 15, 21; *United States v. Fehrenback*, 2 Woods, 175, 197; 3 Woods, 47; 4 Dillon, 128, 145, 407; 5 Dillon, 58; 3 Hughes, 553; *United States v. Hirsch*, 100 U. S., 33, A. D. 1879; *United States v. Sacia, et al.*, 2 Fed. Rep., 754, A. D. 1880; The *Mussel-Slough case*, 5 Fed. Rep., 680, A. D. 1881; The *United States v. Sanche*, 6 Fed. Rep., 715, A. D. 1881; The *United States v. Watson*, 17 Fed. Rep., 145, A. D. 1883; The *United States v. Gordon*, 22 Fed. Rep., 250, A. D. 1884; *In re Wolf*, 27 Fed. Rep., 606, A. D. 1886; The *United States v. Frisbie*, 28 Fed. Rep., 808, A. D. 1886; The *United States v. Britton*, 2 Supreme Court Reporter, 531, A. D. 1883, S. C., 108 U. S. Rep., 199.

<sup>2</sup> See under the above, *U. S. v. Reese*, 92 U. S., 214; *U. S. v. Cruikshank et al.*, 92 U. S., 542; *Seeley v. Knox*, 2 Woods, 368.

way, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States. [See § 5407.]<sup>1</sup>

*Title LXX.—Crimes.—Ch. VII.*

Sec. 5509. If in the act of violating any provision in either of the two preceding sections any other felony committed or misdemeanor be committed, the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offence is committed.

Other crimes while violating the preceding sections.  
31st May,  
1870, c. 116, § 7, v. 16, p. 141.

**THE FOLLOWING SECTION RELATES TO CONSPIRACIES TO PREVENT ACCEPTING OR HOLDING OFFICE UNDER THE UNITED STATES:**

*Title LXX.—Crimes.—Ch. VII.*

Sec. 5518. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, prevent accepting or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months, nor more than six years, or by both such fine and imprisonment. [See § 5407.]<sup>2</sup>

<sup>1</sup> See under above, U. S. v. Cruikshank, 1 Woods, 308, S. C., 92 U. S. Rep., 542; United States v. Waddell, 5 Supreme Court Reporter, 35, A. D. 1884.

<sup>2</sup> Under above see The United States v. Johnson, 26 Fed. Rep., 682, A. D. 1885.

## APPENDIX I.

**THE FOLLOWING SECTION RELATES TO CONSPIRACIES TO  
DEPRIVE ANY PERSON OF THE EQUAL PROTECTION OF  
THE LAW:**

*Title LXX.—Crimes.—Ch. VII.*

Conspiracy to deprive any person of the equal protection of the law.  
20th April, 1871, c. 22, § 2, v. 17, pp. 13, 14.

Sec. 5519. If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State and Territory the equal protection of the laws; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment. [See § 5336.]<sup>1</sup>

**THE FOLLOWING SECTION RELATES TO CONSPIRACIES TO  
PREVENT THE SUPPORT OF ANY CANDIDATE:**

*Title LXX.—Crimes.—Ch. VII.*

Conspiracy to prevent the support of any candidate, &c.  
20th April, 1871, c. 22, § 2, v. 17, pp. 13, 14.

Sec. 5520. If two or more persons in any State or Territory conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy, in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of the Congress of the United States; or to injure any citizen in person or property, on account of such support or advocacy; each of such persons shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment.

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<sup>1</sup> Held to be unconstitutional. U. S. v. Harris, 106 U. S. Rep., 629.

## APPENDIX II.

### STATUTES OF THE STATES RELATING TO CONSPIRACY.

#### *Code.*

Sec. 4152. Any two or more persons conspiring together to commit a felony, must each, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. *Alabama.*

Sec. 4153. Any two or more persons conspiring together to commit a misdemeanor, and doing some act to carry into effect their intent, must each on conviction be fined, &c., &c.<sup>1</sup>

Digest of the State of Arkansas—1884, page 475. *Arkansas.*  
XXVI. Conspiracies and usurpation of office.

Sec. 1821. If any two or more persons conspire, by force or otherwise, to usurp the government of the State, or overthrow the same, or seize any department thereof, or obstruct the administration of justice, by interrupting the proceedings thereof, or by intimidating any court of justice, or any officer of the law, evidenced by any acts, or by forcible attempts to accomplish any of the purposes aforesaid, every person so offending shall, upon conviction, be punished by imprisonment in the penitentiary for a period of not less than one nor more than fifteen years, in the discretion of the Court. Act Feb. 27, 1873.

Sec. 1822. If two or more persons shall agree and conspire to commit any felony, and make some advance thereto, without committing the felony, they shall be deemed guilty of a misdemeanor.

Sec. 1823. If two or more conspire to cheat any person out of any money or other property by false pretences or false tokens, and make some advance thereto, they shall be deemed guilty of a misdemeanor.

Sec. 1824. If one or more persons shall contrive and intend to have any person indicted on any false criminal charge, and make some advance thereto, although such person may not be indicted, he or they shall be deemed

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<sup>1</sup> Combination to forge and utter written instrument, 39 Ala., 240; offence defined, 6 Ala., 765; corrupt intent and design necessary to constitute offence, 34 Ala., 254.

guilty of a misdemeanor. Rev. Stat., Chap. 44, Art. 1, secs. 8-10.

Sec. 1825. If any person shall exercise or attempt to exercise the duties of any office created by the Constitution and laws of this State, without being first qualified in the manner prescribed by law for the discharge thereof, the person so offending shall, upon conviction, be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years, in the discretion of the Court. Act Feb. 27, 1873.

**Delaware.**

Cheats and conspiracies shall be deemed misdemeanors, and shall be punished by fine, imprisonment, and pillory, or by any two, or either of them, in the discretion of the Court. Rev. Code of Del. As amended, &c., p. 786.

**Florida.**

McClellan's Digest of Laws of Florida, 1881, page 398.—Crimes, misdemeanors.

**Conspiracies and illegal combination.**

Sec. 13. If two or more persons shall agree, conspire, combine, or confederate, first, to commit any offence; or, second, falsely or maliciously to indict another for any offence, or procure another to be charged or arrested for any offence; or, third, falsely or maliciously to move or maintain any suit; or, fourth, to cheat and defraud any person of any money or property by any means which, if executed, would amount to a cheat, or to obtaining money by false pretences; or, sixth, to commit any act injurious to the public health or public morals, or for the prevention or obstruction of justice; or, seventh, to interfere with or prevent the holding or conducting of any election, or making returns thereof, or to prevent the due administration of the laws, they shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by imprisonment in the county jail, &c.

**Georgia.**

Code of Georgia, 1873, p. 812.

*Conspiracy to Defraud State or Counties.*

(If two or more persons shall conspire or agree to defraud, cheat, or illegally obtain from the State of Georgia or any county thereof, or any officer of this State, or of any county thereof, or any person exercising the duties of any such office, any property, real, or personal, bonds, notes, choses in action, money, valuable currency, instruments in writing of any kind of value, or anything

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designated by the laws of this State as property, belonging to said State or county, or under the control or possession of said officers as such, such persons shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment and labor in the penitentiary for a term not less than two nor longer than ten years.) [Acts of 1872, p. 25.]

*Conspiracy by Officers to Cheat the State.*

If any person or persons in this State holding any public office therein shall conspire or agree with any person or persons in or out of office to cheat or defraud, or illegally obtain, from the State of Georgia, or any county of the State, any property of any kind described in the preceding section, belonging to said State or county, under the control or possession of said officers as such, such persons shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment and labor in the penitentiary of this State for a term of not less than two nor more than ten years. [Acts of 1872, p. 25.]

*Conspiracy by Legislators.*

All of the preceding sections are extended to members of the General Assembly in this State conspiring or agreeing by fraud, bribery, or other unlawful means with other members of the General Assembly or persons not members of the General Assembly to procure the passage of laws to defraud the State of Georgia or any county thereof, or to any public officer of said State or county, of any property, real or personal, or otherwise, as described in section 4493, and such persons mentioned in this section guilty of violating the provisions of this section, which shall extend to all persons in such conspiracy, are hereby declared to be guilty of a felony, and shall be punished as prescribed in the two sections which preceded this. [Acts of 1872, p. 25.]

*Conspiracy when Complete.*

The offence described in the three preceding sections shall be complete when the conspiracy is effected, and shall be punished whether the same be carried into effect or not. [Acts of 1872, p. 25.]

*Conspiracy.*

If any two or more persons shall conspire or agree falsely and maliciously to charge and indict any innocent person of a crime, who is accordingly indicted and acquitted, such person so conspiring and each and every one of them shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than twelve months nor longer than five years. [Acts of 1872, p. 25.]

*Code of Georgia, 1873—Part III, Title X—Chapter II.*

§ 3774 (3721). Declarations of conspirators. After the fact of conspiracy is proved, the declarations of any one of the conspirators during the pendency of the criminal project are admissible against all.<sup>1</sup>

*Code of Georgia, 1873—Part III, Title X—Ch. II.*

§ 3796 (3743). Confessions of conspirators. The confession of one joint offender or conspirator, made after the enterprise is ended, is admissible only against himself.<sup>2</sup>

Illinois.

Revised Statutes of Illinois, 1883. Chapter 38.

*Criminal Code—Conspiracy.*

45. To indict. § 42. If any two or more persons shall conspire or agree, falsely and maliciously, to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offence, each of the persons so offending shall be fined not exceeding \$1,000, and confined in the county jail not exceeding one year. [R. S., 1845, p. 169, §104.]

46. To do illegal act. § 46. If any two or more persons conspire and agree together, with the fraudulent or malicious intent, wrongfully and wickedly to injure the person, character, business or property of another, or to obtain money or other property by false pre-

<sup>1</sup> Evidence of co-conspirators, 1 Kelley, 610; 8 Ga., 408; 17 Ga., 408; 17 Ga., 536; 18 Ga., 704; 20 Ga., 681; 22 Ga., 399; 34 Ga., 275.

<sup>2</sup> Confessions of principal in first degree evidence of what, on trial of principal in second degree; 7 Ga., 2. Of defendant not on his trial not evidence on trial of co-defendant; 22 Ga., 399. Of accomplice, 43 Ga., 197. See, also, *Johnson v. State*, January Term, 1873.

tences, or to do any illegal act, injurious to the public trade, health, morals, police or administration of public justice, or to prevent competition in the letting of any contract by the State or the authorities of any county, city, town, or village, or to induce any person not to enter into such competition, or to commit any felony, they shall be deemed guilty of a conspiracy; and every such offender, and every person convicted of conspiracy at Common Law, shall be imprisoned in the penitentiary not exceeding three years, or fined not exceeding \$1,000.

46 a. Against people of State, municipalities, &c. § 1.  
*Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That if two or more persons conspire to commit any offence against the State of Illinois, or any county, incorporated city, village, town or township thereof, in any manner or for any purpose, and one or more of such parties, do any act to effect the object of the conspiracy, all parties to such conspiracy shall be liable to a penalty of not less than one hundred dollars, and not more than five thousand dollars, and to be imprisoned either in the penitentiary or county jail for any period not exceeding two years. The time and place of confinement and the amount of the fine to be determined by the jury trying the cause: *Provided, however,* This act shall not be construed to modify or repeal any other law now in force in this State.

Revised Statutes of Indiana, 1881—p. 402.

Indiana.

*Conspiracy.*

Any person or persons who shall unite or combine with any other person or persons for the purpose of committing a felony or felonies; or any person or persons who shall knowingly unite with any other person or persons or body or association or combination of persons whose object is the commission of a felony or felonies, shall upon conviction thereof, be fined in any sum not more than five thousand dollars nor less than twenty-five dollars, and imprisoned in the State prison not more than fourteen years nor less than two years.<sup>1</sup>

Revised Code of Iowa, 1884.

Iowa.

Page 1031. Upon the trial of a conspiracy in a case where an overt act is required by law to constitute the

<sup>1</sup> As to indictment see *Landringham v. State*, 40 Indiana, 186; *State v. McKinster*, 50 id., 465.

offence, the defendant cannot be convicted unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but other overt acts not alleged in the indictment may be given in evidence.

Conspiring to prosecute.

**Sec. 4086.** If two or more persons conspire or confederate together with intent, falsely and maliciously to cause or procure another person to be indicted, or in any way impleaded or prosecuted for an offence of which he is innocent, whether such person be impleaded, indicted, prosecuted or not, they shall be deemed guilty of a conspiracy, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars, nor less than one hundred dollars and imprisonment in the county jail not exceeding one year.

In other cases.

**Sec. 4087.** If any two or more persons conspire or confederate together with the fraudulent or malicious intent, wrongfully to injure the person, character, business or property of another; or to do any illegal act injurious to the public trade, health, morals, or police; or to the administration of public justice; or to commit any felony, they are guilty of a conspiracy, and every such offender, and every person who is convicted of a conspiracy at common law, shall be punished by imprisonment in the penitentiary not more than three years.<sup>1</sup>

Kansas.

Compiled Laws of Kansas, 1885, page 371.

#### *Crimes and Punishments.*

(2315) § 354. Conspiring to obstruct or impede. Sec. 3. If two or more persons shall wilfully and maliciously combine or conspire together to obstruct or impede by any act, or by means of intimidation, the regular operation and conduct of the business of any railroad company, or any other corporation, firm or individual in this State, or to obstruct, hinder or impede, except by due process of law, the regular running of any locomotive engine, freight or passenger train, on any railroad, or the labor or business of any such cor-

<sup>1</sup> See *State v. Potter*, 28 Iowa, 554. *State v. Flynn*, 28 Ibid., 26. *State v. Stevens*, 30 Ib., 391. *State v. Savoye*, 48 Ibid., 562.

poration, firm or individual, such persons shall, on conviction thereof, be punished by fine not less than twenty dollars, nor more than two hundred dollars, and be confined in the county jail not less than twenty nor more than ninety days. [L. 1879, ch. 134 § 3; took effect March 15, 1879.]

*Procedure—Criminal—page 748—Ch, 82.*

(4983) § 212. Conspiracy. In trials for conspiracy, in those cases where an overt act is required by law to consummate the offence, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment or information, and proved on the trial; but other overt acts, not alleged, may be given in evidence on the part of the prosecution.

General Statutes of Kentucky, 1881—page 346. Kentucky.

*Crimes and Punishments.*

§ 21. If any persons shall conspire, confederate, or bind themselves, by oath, covenant or agreement, maliciously to aid one another to carry on, or institute a false prosecution in the name of the Commonwealth against any person, they shall be fined not exceeding one hundred dollars, or imprisoned not exceeding twelve months or both.

Rev. Stat. of Maine, 1883—p. 916. Maine.

If two or more persons shall conspire and agree together, with intent falsely, fraudulently, and maliciously to cause another person to be indicted or in any way prosecuted for an offence of which he is innocent, whether he is prosecuted or not, they are guilty of a conspiracy, and each shall be punished by imprisonment for not more than five years or by fine not exceeding one thousand dollars.

If two or more persons conspire and agree together, with a fraudulent or malicious intent wrongfully and wickedly to injure the person, character, business or property of another; or to do any illegal or injurious act to the public trade, health, morals, police or administration of public justice; or to commit a crime punishable by imprisonment in the State prison, they are guilty of conspiracy, and every such offender and every person convicted of conspiracy at common law shall be

punished by imprisonment for not more than three years or by fine not exceeding one thousand dollars.<sup>1</sup>

**Michigan.**

Howell's Annotated Statutes of Michigan, 1882, page, 2246.

*Title XXXIX.—Offences Against Public Peace.*

Obstructing the operation and business of railroad companies, and other corporations, firms and individuals.

Obstructing business of railroad companies, &c.

§ 9274—1877, p. 5, Feb. 14, Aug. 21, Act 11, Section 1.—The people of the State of Michigan enact, if any person or persons shall wilfully and maliciously by any act, or by means of intimidation, impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company or other corporation, firm or individual in this State, or of the regular running of any locomotive engine, freight, or passenger train of any such company, or the labor and business of any such corporation, firm or individual, he or they shall, on conviction thereof, be punished by imprisonment in the county jail, &c. *Under above see People v. Petheram, 7 Western Reporter, 592.*

Conspiracy to obstruct, penalty for.

§ 9275—Sec. 2. If two or more persons shall wilfully and maliciously combine, or conspire together, to obstruct or impede, by any act or by means of intimidation, the regular operation and conduct of the business of any railroad company or any other corporation, firm or individual in this State, or to impede, hinder or obstruct, except by due process of law, the regular running of any locomotive, engine, freight or passenger train, on any railroad, or the labor and business of any such corporation, firm or individual, such persons shall, on conviction thereof, be punished, &c.

Act not to apply to persons voluntarily quitting employment.

§ 9276—Sec. 3. This act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company, or such other corporation, firm or individual, whether by concert of action or otherwise.

<sup>1</sup> R. S. c. 126 par. 17.  
15 Me. 102.  
30 Me. 135.  
31 Me. 388—400  
34 Me. 321.  
48 Me. 235.  
64 Me. 370.

## Revised Statutes.

Missouri.

Sec. 1524. If two or more persons shall agree, conspire, combine or confederate, first, to commit any offences; or, second, falsely or maliciously to indict another for any offense; or, third, falsely or maliciously to move or maintain any suit; or, fourth, to cheat and defraud any person of any money or property, by means which are in themselves criminal; or, fifth, to cheat and defraud any person of money or property by any means which, if executed, would amount to a cheat, or to obtaining money or property by false pretences; or, sixth, to commit any act injurious to the public health or public morals, or for the perversion or obstruction of justice, in the due administration of the laws—they shall be deemed guilty of a misdemeanor. 29 Mo., 32; 42 Mo., 239.

Sec. 1529. No agreement except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act besides such agreement be done to effect the object thereof by one or more of the parties to said agreement.

## General Statutes of Nebraska, 1873, page 765.

Nebraska.

Sec. 178. If two or more persons shall conspire or Conspiracy. agree, falsely or maliciously, to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offence, each of the persons so offending shall be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

## Revision of New Jersey, 1709-1877, page 261.

New Jersey.

If two or more persons shall combine, unite, confederate, conspire or bind themselves by oath, covenant, agreement, or other alliance to commit any offence, or falsely and maliciously to indict another for any offence, or falsely to maintain any suit, or to cheat and defraud any person of any property by any means which are in themselves criminal, or to cheat and defraud any person of any property by means which, if executed, would amount to a cheat, or to obtaining money by false pretences, or to commit any act injurious to the public health, to public morals or to trade or commerce, or for the perversion or obstruction of justice, or the administration of the laws, they shall, on conviction be

deemed guilty of a conspiracy, and shall be punished by imprisonment at hard labor not exceeding two years or by a fine not exceeding five hundred dollars, or both, but no agreement to commit any offence other than murder, manslaughter, sodomy, rape, arson, burglary or robbery shall be deemed a conspiracy unless some act in execution of which agreement be done to effect the object thereof by one or more of the parties to said agreement.<sup>1</sup>

## New York.

## Revised Statutes.

Par. 8. If two or more persons shall conspire, either, first, to commit any offence; or, second, falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence; or, third, falsely to move and maintain any suit; or, fourth, to cheat and defraud any person or any property by any means which are in themselves criminal; or, fifth, to cheat and defraud any person of any property by any means which, if executed, would amount to a cheat, or to obtaining money by false pretences; or, sixth, to commit any act injurious to the public health, to public morals or to trade or commerce; or for the perversion or obstruction of justice or the administration of the laws; they shall be deemed guilty of a misdemeanor.

Par. 9. No conspiracies, other than such as are enumerated, are punishable criminally.

Conspiracy defined, 63 N. Y., 692; 9 Hun., 89; 23 Barb., 634; 20 Barb., 438; 16 Barb., 495; 7 Barb., 393; 5 Denio., 413; 4 Denio., 353; 20 Wend., 221; 14 Wend., 15; 56 N. Y., 190; 37 id., 508.

*Labor Unions Lawful.*

Sec. 1. The provisions of sub-division six of section one, chapter one, title six, part four of the Revised Statutes, shall not be considered in any Court of this State to restrict or prohibit the orderly and peaceable assembling or cooperation of persons employed in any profession, trade or handicraft for the purpose of securing an advance in the rate of wages or compensation, or for the maintenance of such rate.

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<sup>1</sup> *State v. Rickey*, 4 Hal., 293; *State v. Norton*, 3 Zab., 33; *Johnson v. State*, 2 Dutch., 313; 5 Dutch., 453; *State v. Donaldson*, 3 Vr., 151; *State v. Young*, 8 Vr., 184; *Patton v. Freeman, Coxe*, 113; *Stewart v. Johnson*, 3 Harr., 90; *Per Dayton, J.*

Code of 1883.

N. Carolina.

Sec. 974. Every one who shall conspire to abduct or ~~Abduction of~~ by any means shall induce any child under the age of children, act fourteen years, who shall reside with any of the persons of 1879. aforesaid (father, mother, uncle, and brother or elder sister) or at school, to leave the persons aforesaid or the school shall be guilty of a crime, and shall be punished, &c. *State v. Sullivan*, 85 N. C. 506.

Sec. 1107. If two or more persons shall conspire together to overthrow or put down or destroy by force the government of North Carolina, or to levy war against the government of this State, or to oppose by force the authority of said government, or by force, or by threats, intimidation, or to intimidate, or to prevent, hinder or delay the execution of any law of the State, or by force or fraud to seize or take possession of any fire arms or property of the State aforesaid, against the will or contrary to the authority of said State, every person so offending in any of the ways aforesaid shall be guilty of a high crime and imprisoned, &c. *State v. Jackson*, 82, N. C. 565.

Revised Crim. Code of Pennsylvania, Brightley's Purdon's Digest, Vol. I.—Title Crimes, VII—Section 6,  
*Conspiracy*.

211. If any two or more persons shall conspire or ~~Pennsylvania.~~ agree, falsely or maliciously, to charge or indict any other person, or cause or procure him to be charged or indicted, in any court of criminal jurisdiction, the person so offending shall be guilty of a misdemeanor, and on conviction, be sentenced to pay a fine, not exceeding one thousand dollars, and to undergo an imprisonment, either at labor by separate or solitary confinement, or to simple imprisonment, not exceeding three years at the discretion of the court.

212. If any two or more persons shall falsely and maliciously conspire and agree to cheat and defraud any person or body corporate, of his or their moneys, goods, chattels or other property, or to do any other dishonest, malicious or unlawful act to the prejudice of another, they shall be guilty of a misdemeanor, and on conviction, be sentenced to pay a fine, not exceeding five hundred dollars, and to undergo an imprisonment, by separate or solitary confinement at labor, or by simple imprisonment, not exceeding two years.

213. It shall be lawful for any laborer or laborers, workingman or workingmen, journeyman or journey-

## APPENDIX II.

men, acting either as individuals or as the member of any club, society or association, to refuse to work or labor for any person or persons, whenever, in his, her or their opinion, the wages paid are insufficient, or the treatment of such laborer or laborers, workingman or workingmen, journeyman or journeymen, would be contrary to the rules, regulations or by-laws of any club, society or organization to which he, she or they might belong, without subjecting any person or persons, so refusing to work or labor, to prosecution or indictment for conspiracy under the criminal laws of this Commonwealth: *Provided*, That this act shall not be held to apply to the member or members of any club, society or organization, the constitution, by-laws, rules and regulations which are not in strict conformity to the Constitution of the State of Pennsylvania, and to the Constitution of the United States: *Provided*, That nothing herein contained shall prevent the prosecution and punishment, under existing laws, of any person or persons who shall, in any way, hinder persons who desire to labor for their employers from so doing, or other persons from being employed as laborers.

## S. Carolina.

## General Statutes—1882.

Sec. 2567. If any two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to injure, oppress or violate the person or property of any citizen, because of his political opinion or his expression or exercise of the same, or shall attempt by any means, measure or acts, to hinder, prevent or obstruct any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States, or by the Constitution and laws of this State, such person shall be deemed guilty of felony, and shall be, &c., &c.

Sec. 2568. If in violating any of the provisions of Sec. 2567 \* \* \* any other crime, misdemeanor or felony shall be committed, the offender or offenders shall on conviction thereof, be subjected to such punishment for the same as is attached to such crime, misdemeanor and felony, by the existing laws of this State.

Code of Tennessee, 1884—page 1068.

Tennessee.

*Offences Against Public Justice—Article III.**Conspiracy.*

5583. The crime of conspiracy may be committed by any two or more persons conspiring—

Conspiracy.  
(4789.)

1. To commit any indictable offence.
2. Falsely and maliciously to indict another for such offence.
3. To procure another to be charged with, or arrested for any such offence.

4. Falsely to move or maintain any suit.

5. To cheat and defraud any person of any property by means in themselves criminal, or by any means which would amount to a cheat.

6. To obtain money by false pretences.

7. To commit any act injurious to public health, public morals, trade, or commerce, or for the perversion or obstruction of justice, or the due administration of the law.

5584. Persons guilty of any conspiracy described in Misdemeanor—the preceding section, or of any conspiracy at common or. (4790.) law are guilty of a misdemeanor.

5585. No agreement shall be deemed a conspiracy When an unless some act be done to effect the object thereof, except an agreement to commit a felony on the person of another or to commit the crimes of arson or burglary. (4791.)

5586. If the conspiracy be to indict or prosecute an innocent person for a felony, knowing such person to be innocent, and he shall be falsely and maliciously indicted in pursuance of such conspiracy, the persons conspiring shall be imprisoned in the penitentiary not less than two nor more than ten years.

Page 1076—*Offences Against Public Trade.*

6. Any conspiracy by two or more persons to do an act injurious to public trade as provided in section 5583.

Rev. Stat. of Texas, 1879—page 104.

Texas.

*Title XVIII—Miscellaneous Offences—Ch 1.**Of Conspiracy.*

Art. 800. A “conspiracy” is an agreement entered  
(4931)

Definition, into between two or more persons to commit any one of  
 (act Oct. 26, the offences hereafter named in this chapter.  
 1871, p. 15.)

P. C. 776. Art. 801. The offence of conspiracy is complete,  
 When offence although the parties conspiring do not proceed to ef-  
 comple. Ib. fect the object for which they have so unlawfully com-  
 P. C. 777. bined.

Agreement Art. 802. Before any conviction can be had for the  
 must be posi- offence of conspiracy, it must appear that there was a  
 tive. Ib. P. positive agreement to commit one of the offences here-  
 C. 778. after named in this chapter. It will not be sufficient  
 that such agreement was contemplated by the parties  
 charged.

Mere threat Art. 803. A threat made by two or more persons act-  
 not sufficient ing in concert will not be sufficient to constitute con-  
 Ib. P. C. 779. spiracy.

What crimes Art. 804. The agreement to come within the defi-  
 the subject of nition of conspiracy, must be to commit one or more of  
 Ib. P. C. 780. the following offences, to wit: murder, robbery, arson,  
 burglary, rape, theft or forgery.

Punishments Art. 805. Conspiracy to commit murder shall be pun-  
 Ib. P. C. 781. ished by confinement in the penitentiary not less than  
 two years nor more than ten years. Conspiracy to com-  
 mit any one of the other offences named in the preced-  
 ing article shall be punished by confinement in the  
 penitentiary not less than two nor more than five  
 years.

To kill, same Art. 806. A conspiracy to kill a human being  
 as murder, shall be deemed a conspiracy to commit murder.  
 (act Oct. 26,

1871, p. 16,) P. C. 782. Art. 807. A conspiracy entered into in this State for  
 Conspiracy to the purpose of committing any one of the offences named  
 commit of- in Article 804, in any other of the states or territories  
 fence in of the United States, or in any foreign territory, shall  
 another State be punished in the same manner as if the conspiracy so  
 Ib. P. C. 783. entered into was to commit the offence in this State.

Conspiracy in Art. 808. A conspiracy entered into in another State  
 another State, or Territory of the United States, to commit any one of  
 to commit of- the offences named in Article 804 in this State, Shall be  
 fence in this. punished in the same manner as if the conspiracy had  
 been entered into in this State.

#### *Title IV—Commencement of Criminal Actions—Ch. 2.*

Conspiracy Art. 221. The offence of conspiracy may be prose-  
 where prosé- cuted in the county where the conspiracy was entered  
 cuted.

Art. 221. The offence of conspiracy may be prose-  
 cuted in the county where the conspiracy was entered  
 into, or in the county where the same was agreed to be  
 executed, and when the conspiracy is entered into in  
 another State, Territory or country, to commit an of-  
 fense in this State, the offence may be prosecuted in the

county where such offence was agreed to be committed, or in any county where any one of the conspirators may be found, or in the county where the seat of government is located.

Revised Laws of Vermont, 1880, page 814.

Vermont.

*Raids.*

Sec. 4236. If three or more persons conspire together for the purpose and with the intent, violently and forcibly, to kill, maim or wound any person, or rob any person, corporation or community, or to burn, blow up or otherwise destroy any bank building, store, factory, dwelling house or other building or depository of property, or a railroad car or engine, or any vessel, steamboat or other watercraft finished or unfinished, for use in navigable waters, each person so offending shall be imprisoned in the State prison not more than twenty years, and fined not more than ten thousand dollars.

Sec. 4237. If three or more persons, acting in concert, with force and violence, attempt to kill, maim or wound any person or to rob any person, corporation or community of money or other property, or to burn, blow up or otherwise destroy any bank building, store, factory, dwelling house, or other building or depository of property, or any railroad car, or any steamboat, vessel or watercraft, finished or unfinished, for use in navigable waters, each person so offending shall suffer the penalty of death.

Sec. 4238. A person who wilfully and knowingly aids, assists, counsels, advises or supports the commission of any or either of the offences named in the two preceding sections, or, having knowledge thereof, does not close the same, shall be deemed to be a principal in the commission of such offence, and shall be punished as such.

Code of Virginia, 1873, p. 1187, Ch. 186.

*Attempting or Instigating others to Establish Usurped Government.*

3. If any person attempt to establish any such usurped government, and commit any overt act therefor, or, by writing or speaking, endeavor to instigate others to establish such government, he shall be confined in jail not exceeding twelve months, and fined not exceeding one thousand dollars.

(4933)

Conspiring to make a raid, 1864, No. 2, § 1.

Making a raid, 1864, No. 2, § 2.

Aiding in or aiding a raid, 1864, No. 2, § 3.

*Advising or Conspiring to Rebel, &c.*

1865-6, c. 12, 4. If any person shall conspire with another to incite  
p. 81-2. the colored population of the State to make insurrection,  
by acts of violence and war, against the white popula-  
tion, or to incite the white population of the State to  
make insurrection, by acts of violence and war, against  
the colored population, he shall, whether such insurrec-  
tion be made or not, be punished by confinement in the  
penitentiary for not less than five nor more than ten  
years.

Wisconsin. Rev. Stat. of Wisconsin, 1878.

*Offences against Public Policy—Miscellaneous Offences.*

Conspiracy. Section 4568. Any person guilty of a criminal con-  
spiracy at Common Law shall be punished by imprison-  
ment in the county jail not more than one year, or by  
fine not exceeding five hundred dollars; but no agree-  
ment except to commit a felony upon the person of an-  
other, or to commit arson or burglary shall be deemed  
a conspiracy, or be punished as such, unless some act,  
beside such agreement be done, to effect the object  
thereof, by one or more of the parties to such agree-  
ment.

Limitation and penalty.

## APPENDIX III.

### FORMS OF INDICTMENTS.

Indictment in State *v.* Buchanan, 5 Har & John (Md. 817.)—drawn by Luther Martin—Conspiring to Cheat and Defraud.

State of Maryland, city of Baltimore, to wit:

The jurors for the State of Maryland, for the body of the city of Baltimore, on their oath, present that by an Act of Congress of the United States, passed on the tenth day of April, in the year of our Lord one thousand eight hundred and sixteen, at the city of Washington, entitled "An act to incorporate the subscribers to the Bank of the United States," a bank was established and chartered as a corporation and body politic, by the name and style of the president, directors and company of the Bank of the United States, with authority, power and capacity, among other things, to have, purchase, receive, possess, enjoy and retain, to them and their successors, lands, rents, tenements, hereditaments, goods, chattels and effects, of whatsoever kind, nature and quality, to an amount not exceeding in the whole, fifty-five millions of dollars, to deal and trade in bills of exchange, gold and silver bullion, and to take at the rate of six per cent. per annum for or upon its loans or discounts, and to issue bills or notes signed by the president, and countersigned by the principal cashier or treasurer thereof, promising the payment of money to any person or persons, his, her, or their order, or to bearer. And that under and by virtue of the power and authority given to said directors by said Act of Congress, an office of discount and deposit of said corporation was, at the time hereinafter mentioned, regularly and duly established in pursuance of the power contained in said act, at the city of Baltimore, in the State of Maryland as aforesaid, and that George Williams, late of the city of Baltimore, merchant, was at the time hereinafter mentioned, and before and afterwards, one of the directors of the said Bank of the United States at Philadelphia, to wit, at the city of Baltimore aforesaid, and that James A. Buchanan, late of the city of Baltimore, merchant, was at the time hereinafter mentioned, and before and since president of the said office of discount and deposit of the said Bank of the United States in the city of Baltimore, and James W. McCulloh, late of the city of Baltimore, gentleman, was at the time hereinafter mentioned, and before and afterwards, cashier of said office of discount and deposit of the said Bank of the United States in the city of Baltimore, to wit, at the city of Baltimore aforesaid. And that the said George Williams, so being one of the directors of the said Bank of the United

States, and the said James A. Buchanan, so being president of the said office of discount and deposit of the said bank in the city of Baltimore, and the said James W. McCulloh, so being cashier of the said bank in the city of Baltimore, being evil disposed and dishonest persons, and wickedly devising, contriving, and intending, falsely, unlawfully, fraudulently, craftily and unjustly, and by direct means, to cheat and impoverish the said president, directors and company, of the Bank of the United States, and to defraud them of their moneys, funds and promissory notes for the payment of money, commonly called bank notes, and of their honest and fair gains to be derived under and pursuant to the said Act of Congress from the use of their said moneys, funds, and promissory notes for the payment of money, commonly called bank notes, on the eighth day of May, in the year of our Lord, one thousand eight hundred and nineteen, at the city of Baltimore aforesaid, with force and arms, etc., did wickedly, falsely, fraudulently and unlawfully conspire, combine, confederate and agree together, by wrongful and indirect means, to cheat, defraud and impoverish the said president, directors and company of the Bank of the United States, and by subtle, fraudulent, and indirect means, and divers artful, unlawful and dishonest devices and practices, to obtain and embezzle a large amount of money, commonly called bank notes, to wit, of the amount and value of fifteen hundred thousand dollars current money of the United States, the same being then and there the property, and part of the proper funds of the said president, directors and company, of the Bank of the United States from and out of the said office of discount and deposit of the said bank in the city of Baltimore, without the knowledge, privity or consent of the said president, directors and company, of the Bank of the United States, and also without the privity, consent or knowledge of the directors of the said office of discount and deposit of the said bank in the city of Baltimore, for the purpose of having and enjoying the use thereof for a long space of time, to wit, for the space of two months, without paying any interest, discount or equivalent, for the use thereof, and without securing the repayment thereof to the said corporation. And the more effectually and securely to perpetuate and conceal the same, that the said James W. McCulloh should from time to time falsely and fraudulently state, allege, and represent, to the said directors of the said office of discount and deposit in the city of Baltimore, that such moneys and promissory notes, so agreed to be obtained and embezzled as aforesaid, were loaned on good, sufficient and ample security, in capital stock of the said bank, pledged and deposited therefor; and also should from time to time make and fabricate false statements and vouchers respecting the same, and other property and funds of the said corporation, to be laid before and exhibited to the said directors of the said office of discount and deposit of the said bank in the city of Baltimore. And that the said George Williams, James

A. Buchanan and James W. McCulloh, being such officers of the said corporation as aforesaid, did then and there, in pursuance of and according to the said unlawful, false, and wicked conspiracy and confederacy, combination and agreement aforesaid, by indirect, subtle, wrongful, fraudulent and unlawful means, and by divers artful and dishonest devices and practices, and without the knowledge, privity or consent of the said president, directors and company of the Bank of the United States, and without the privity, knowledge or consent of the directors of the said office of discount and deposit of the said bank in the city of Baltimore, obtain and embezzle a large amount of moneys and of promissory notes for the payment of money, commonly called bank notes, the same being the property and part of the proper funds of the said corporation, from and out of their said office of discount and deposit in the city of Baltimore, to wit, of the amount and value of fifteen hundred thousand dollars current money of the United States, for the purpose of having and enjoying the use thereof, and did have and enjoy the use thereof for a long space of time, to wit, for the space of two months, without paying any interest, discount or equivalent therefor, and without securing the repayment of the said moneys and the said promissory notes for the payment of money commonly called bank notes; and did then and there falsely, craftily, deceitfully, fraudulently, wrongfully and unlawfully, keep and convert the same to their own use and benefit, without the knowledge, privity or consent of the directors of the said office of discount and deposit in the city of Baltimore; and did then and there, the more effectually to perpetuate and conceal the said conspiracy, confederacy, fraud and embezzlement, cause and procure false and fraudulent representations, allegations, statements and vouchers, to be made and fabricated, and the same to be exhibited to and laid before the directors of the said office of discount and deposit in the city of Baltimore, by the said James W. McCulloh, as cashier of the said office of discount and deposit, respecting the said moneys, and the said promissory notes for the payment of money, so obtained and embezzled as aforesaid, in which such representations, allegations, statements and vouchers, it was then and there falsely and fraudulently represented, alleged and exhibited, that the said moneys, and promissory notes for the payment of money, were loaned on good, sufficient, and ample security, in capital stock of the said bank, pledged and deposited therefor, when in truth and in fact no capital stock of the said bank, and no other security, was pledged or deposited therefor, as the said George Williams, James A. Buchanan, and James W. McCulloh, then and there well knew. And that the said false, wicked, unlawful, and fraudulent conspiracy, confederacy and agreement, above mentioned, and the said false, wicked, unlawful and fraudulent acts, done in pursuance thereof above set forth, were then and there made, done and perpetrated, by the said George Williams, James A. Bu-

chanan, and James W. McCulloh in abuse and violation of their duty, and the trust reposed in them, and the oaths taken and lawfully sworn by them respectively as such officers of the said corporation as aforesaid. And that the said George Williams, James A. Buchanan, and James W. McCulloh, did then and there thereby falsely, wickedly, fraudulently, wrongfully and unlawfully, impoverish, cheat and defraud the said president, directors and company of the Bank of the United States to the great damage of the said president, directors and company, to the evil example of all others in like manner offending, and against the peace, government and dignity of the State of Maryland, etc.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said George Williams, so being one of the directors of the Bank of the United States at Philadelphia, to wit, at Baltimore aforesaid, and the said James A. Buchanan, so being president of the said office of discount and deposit of the said bank in the city of Baltimore, and the said James W. McCulloh so being cashier of the said office of discount and deposit of the said bank in the city of Baltimore, being evil disposed and dishonest persons, and wickedly devising and contriving, and intending, falsely, unlawfully, fraudulently, craftily and unjustly, and by indirect means, to cheat and impoverish the said president, directors and company of the Bank of the United States, and to defraud them of their moneys, funds, and promissory notes for the payment of money, commonly called bank notes, and of their honest and fair gains to be derived under and pursuant to the said Act of Congress, from the use of their said moneys, funds, and promissory notes for the payment of money, commonly called bank notes, afterwards, to wit, on the eighth day of May, in the year of our Lord, one thousand eight hundred and nineteen, at the city of Baltimore aforesaid, with force and arms, etc., did wickedly, falsely, fraudulently, and unlawfully conspire, combine, confederate and agree together, by wrongful and indirect means, to cheat, defraud and impoverish, the said president, directors and company of the Bank of the United States, and by subtle, fraudulent, and indirect means, and divers artful, unlawful and dishonest devices and practices, to obtain and embezzle a large amount of money, and of promissory notes for the payment of money, commonly called bank notes, to wit, of the amount and value of fifteen hundred thousand dollars current money of the United States, the same being then and there the property and part of the proper funds of the said president, directors and company, of the Bank of the United States, of and out of the said office of discount and deposit of the said bank in the city of Baltimore, without the knowledge, privity or consent, of the said president, directors and company of the Bank of the United States, and also without the privity, consent or knowledge, of the directors of the said office of discount and deposit of the said bank in the city of Baltimore, for the having and enjoying the use thereof for a long

space of time, to wit, for the space of two months, without paying any interest, discount or equivalent for the use thereof, and without securing the repayment thereof to the said corporation. And that the said false, wicked, unlawful and fraudulent conspiracy, confederacy and agreement above mentioned, were then and there made, done and perpetrated, by the said George Williams, James A. Buchanan, and James W. McCulloh, in abuse and violation of their duty, and the trust reposed in them, and the oaths taken and lawfully sworn by them respectively as such officers of the said corporation aforesaid, to the great damage of the said president, directors and company, to the evil example of all others in like manner offending, and against the peace, government, and dignity of the State of Maryland, etc.

LUTHER MARTIN,  
Attorney General of Maryland, and District Attorney of Baltimore  
City Court.

COPY OF INDICTMENT IN STAR ROUTE CASE, WASHINGTON, 1882.

Drawn by W. W. Ker, Esq., of Philadelphia—Conspiracy to Cheat and Defraud the United States.

In the Supreme Court of the District of Columbia, holding a criminal term, March term, 1882.

*District of Columbia,* } ss:  
*County of Washington,* } ss:

The Grand Jurors of the United States of America, in and for the county and district aforesaid, upon their oaths, do present:

That heretofore, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-nine, at Washington, in the said District of Columbia, and in the said United States of America, and within the jurisdiction of the said Court, the Post-Office Department was then and there an Executive Department of the Government of the said United States of America, established by an Act of Congress of the said United States of America, and one D. M. K., was then and there the Postmaster General and head of the said Department. And that under and by virtue and authority of the Acts of the said Congress of the United States of America, it was, amongst other things, commanded, provided and required that there should be in the said Post-Office Department "three Assistant Postmasters General;" and that there should be in the office of each of the said Assistant Postmasters General "clerks of the fourth class;" and that the said Postmaster General, as head of the said department, should "prescribe regulations not inconsistent with law for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers and property appertaining to it;" and that he should "superintend generally the business of the department, and

execute all the laws relative to the postal service;" and that he should "provide for carrying the mail on all post roads established by law, as often as he, having due regard to the productiveness and other circumstances may think proper;" and that "all bonds taken and contracts entered into by the said Post-Office Department shall be made to and with the United States of America;" and that "compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service; and that when any such additional service is ordered the sum to be allowed therefor shall be expressed in the order and entered upon the books of the department, and no compensation shall be paid for any additional regular service rendered before the issuing of such order;" and that "no extra allowance shall be made for any increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution;" and that "the Postmaster General may make deductions from the pay of contractors for failure to perform service according to contract, and impose fines upon them for other delinquencies, he may deduct the price of a trip in all cases where the trip is not performed, and not exceeding three times the price, if the failure be occasioned by the fault of the contractor or carrier;" and that "the Postmaster General shall deliver to the (Auditor of the Treasury for the Post-Office Department, to wit,) the Sixth Auditor, within sixty days after the making of any contract for carrying the mail, a duplicate copy thereof;" and that "all orders and regulations of the Postmaster General, which may originate a claim or in any manner affect the accounts of the postal service shall be certified to the Sixth Auditor;" and that "all payments on account of the postal service shall be made to persons to whom the same shall be certified to be due by the Sixth Auditor;" and that "every entry, order or any memorandum whatever, on which any action is to be based, allowances made or money paid, and every contract, paper, or obligation made by or with the Post-Office Department, shall have its true date affixed to it, and every paper relating to contracts or allowances filed in the department shall have the date when it was filed indorsed upon it."

And that thereupon, to wit, on the said twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of the said Court, the said Postmaster General, as thereunto authorized, commanded and required, as aforesaid, did make, establish, and prescribe certain regulations for the government of the said Post Office Department, the conduct of its officers and clerks, the

distribution and performance of its business, and the custody, use and preservation of its records, papers, and property appertaining to it; and amongst other things the said Postmaster General did then and there prescribe as follows, to wit: "The contract office, including the divisions of contracts, inspection, mail equipments, special agents, and mail depredations, and topographical division, in charge of the second assistant Postmaster General."

"*Contract Division.*—To this division is assigned the business of arranging the mail service of the United States, and placing the same under contract, embracing all correspondence and proceedings respecting the frequency of trips, mode of conveyance, and times of departures and arrivals on all the routes; the course of the mails between the different sections of the country, the points of mail distribution, and the regulations for the government of the domestic mail service of the United States. It prepares the advertisements for mail proposals, receives the bids, and has charge of the annual and occasional mail lettings, and the adjustment and execution of the contracts. All applications for the establishment or alteration of mail arrangements and for mail messengers should be sent to this office. All claims should be submitted to it for transportation service not under contract. From this office all postmasters at the ends of routes receive the statement of mail arrangements prescribed for the respective routes. It reports weekly to the auditor all contracts executed, and all orders affecting the accounts for mail transportation; prepares the statistical exhibits of the mail service, and the reports to Congress of the mail lettings, giving a statement of each bid; also, of the contracts made, the new service originated, the curtailments ordered, and the additional allowances granted within the year.

"*Inspection Division.*—To this division is assigned the duty of receiving and examining the registers of the arrivals and departures of the mails, certificates of the service of route agents, and reports of mail failures; noting delinquencies of contractors, and preparing cases thereon for the action of the Postmaster General; furnishing blanks for mail registers, reports of mail failures, and other duties which may be necessary to secure a faithful and exact performance of mail contracts and service.

"*Topographical Division.*—This division is charged with the preparation of the post route maps and diagrams, and with the keeping up of the geographical information requisite for the various branches of the postal service."

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, and then and there, to wit, on the said twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of the said Court, one T. J. B. was the lawfully appointed Second Assistant Postmaster General of the United State

of America, and was then and there engaged in performing the duties of the said office of Second Assistant Postmaster General, and that one W. H. T. was then and there a clerk of the said fourth class in the said office of Second Assistant Postmaster General, and was then and there employed and engaged in performing the duties of said office of clerk in the said office of the Second Assistant Postmaster General; and in obedience to the regulations prescribed by the said Postmaster General, it then and there became and was the duty of him, the said W. H. T., as such clerk as aforesaid, amongst other things, to attend to the said business in the said contract division of the said office of the Second Assistant Postmaster General, relating to the mail service and carrying and transporting the mails of the United States on and over the several post routes in the States of California, Colorado, Oregon and Nebraska, and Arizona Territory, Dakota Territory and Utah Territory; and to mark and indorse upon all papers relating to contracts, allowances and the said post routes in the said States and Territories, the true date when such paper was filed in the said office of the Second Assistant Postmaster General, and to mark and indorse upon papers and orders made and filed in the said office, and relating to the said post routes in the said States and Territories, the true date when such paper and order was made and filed; and whenever petitions, applications, letters, oaths, depositions, statements and papers were received and filed in the said office, relating and pertaining to carrying and transporting the said mails on and over the said post routes in the said States and Territories, to mark and endorse upon such petitions, applications, letters, oaths, depositions, statements and papers the true date when each was received and filed; and to wrap and inclose every such petition, application, letter, oath, deposition, statement, and paper in an envelope and cover, commonly called a jacket; and to write and indorse upon the outside of every such envelope, cover, and jacket the true name, kind and character of the paper so inclosed, with a true brief statement and description of the nature, subject matter, and contents of every such paper so inclosed as aforesaid; and to arrange in proper and regular order in separate packages and bundles the papers received and filed in the said office relating and pertaining to each of the said post routes in the said States and Territories as aforesaid; and to receive, read, write and prepare answers to letters and communications relating to the said post routes in the said States and Territories; and to write and prepare orders for allowances to be made to and deductions to be made from the pay of contractors engaged and employed in carrying and transporting the said mails on and over the said post routes in the said States and Territories aforesaid.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That heretofore, to wit, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and

seventy-eight, and from that day until the day of the making of this presentment by the grand jurors aforesaid, there were and are in the said United States of America, a large number, to wit, nine thousand two hundred and twenty-five post routes lawfully established in the several States and Territories of the United States of America, for the carriage and transportation of the mails and mail matter of the said United States to and from certain lawfully established post-offices in the several States and Territories aforesaid; and which said post routes then were and yet are known and designated by certain numbers.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That heretofore, to wit, on the said fifteenth day of March, in the year of our Lord one thousand eight hundred and seventy-eight, at the county and district aforesaid, and within the jurisdiction of the said Court, the said Postmaster General, by the said Second Assistant Postmaster General, in the name and on behalf of the said United States of America, did make, sign and enter into seven certain contracts and agreements between the said United States of America and one J. W. D., bearing date the day and year aforesaid, wherein and whereby the said J. W. D., did contract, covenant and agree to carry and transport the said mails of the United States on and over seven of the said post routes, from the first day of July, in the year of our Lord one thousand eight hundred and seventy-eight, to the thirtieth day of June in the year of our Lord one thousand eight hundred and eighty-two, for the number of times and trips each week, and by a schedule of arrivals and departures, and for the several sums and amounts of money to be paid by the United States of America to him, the said J. W. D., each year, as in the said contracts and agreements mentioned and set forth, as follows, to wit:

On route numbered 35,015 from Vermillion, in the said Dakota Territory, by Greenfield, Alsen, Sunnyside, Glenwood, Brooklyn, Kidder, Maple Grove, Burleigh and Huron, to Sioux Falls and back, once a week, on a schedule of fourteen hours' time, leaving Vermillion on Friday at six o'clock in the morning and arriving at Sioux Falls by eight o'clock in the afternoon, leaving Sioux Falls on Saturday at six o'clock in the morning and arriving at Vermillion by eight o'clock in the afternoon, and for the amount of three hundred and ninety-eight dollars each year.

And on route numbered 38,113, from White River, in the said State of Colorado, by Windsor and Dixon, to Rawlins and back, once a week, on a schedule of one hundred and eight hours' time, leaving White River on Monday at six o'clock in the morning, and arriving at Rawlins on Friday by six o'clock in the afternoon, and leaving Rawlins on Monday at six o'clock in the morning, and arriving at White River on Friday by six o'clock in the afternoon, and for the amount of one thousand seven hundred dollars each year.

And on route numbered 38,145 from Garland, in the State of Colorado, by Conejos, Ojo Caliente, El Rito, Puna Armarilla, Parkview, Florida, and Animas City, to Parrot City and back, once a week, on a schedule of one hundred and sixty-eight hours' time, leaving Garland on Monday at six o'clock in the morning, and arriving at Parrott City in seven days, and leaving Parrott City on Monday at seven o'clock in the morning, and arriving at Garland in seven days, and for the amount of two thousand seven hundred and forty-five dollars each year.

And on route numbered 38,152 from Ouray, in the said State of Colorado, by Hot Springs to Los Pinos and back, once a week, on a schedule of twelve hours' time, leaving Ouray on Friday at six o'clock in the morning, and arriving at Los Pinos by six o'clock in the afternoon, and leaving Los Pinos on Saturday at six o'clock in the morning, and arriving at Ouray by six o'clock in the afternoon, and for the amount of three hundred and forty-eight dollars each year.

And on route numbered 38,156, from Silverton, in the said State of Colorado, by Nicorra, and Hermosa to Parrott City and back, twice a week, on a schedule of thirty-six hours' time, leaving Silverton on Tuesday and Friday at six o'clock in the morning, and arriving at Parrott City the next day by six o'clock in the afternoon, and leaving Parrott City on Tuesday and Friday, at six o'clock in the morning, and arriving at Silverton the next day by six o'clock in the afternoon, and for the amount of one thousand four hundred and eighty-eight dollars each year.

And on route numbered 40,104, from Mineral Park, in the said Arizona Territory, by St. Thomas and St. Joseph, to Pioche and back, once a week, on a schedule of eighty-four hours' time, leaving Mineral Park on Wednesday at six o'clock in the morning, and arriving at Pioche on Saturday by six o'clock in the afternoon and leaving Pioche on Wednesday at six o'clock in the morning, and arriving at Mineral Park on Saturday by six o'clock in the afternoon, and for the amount of two thousand nine hundred and eighty-two dollars each year.

And on route numbered 40,113, from Tres Alamos, in the said Arizona Territory, by Camp Grant, Goodwin, Camp Thomas and Safford, to Clifton and back, once a week, on a schedule of eighty-four hours' time, leaving Tres Alamos on Monday at seven o'clock in the morning and arriving at Clifton on Thursday by seven o'clock in the afternoon, and leaving Clifton on Monday at seven o'clock in the morning and arriving at Tres Alamos on Thursday by seven o'clock in the afternoon, and for the amount of one thousand five hundred and sixty-eight dollars each year.

And the said Postmaster General, by the said Second Assistant Postmaster General, in the name and on behalf of the United States of America, did then and there make, sign and enter into five cer-

tain contracts and agreements between the said United States of America and one J. R. M., bearing date the said fifteenth day of March, in the year of our Lord one thousand eight hundred and seventy-eight, wherein and whereby the said J. R. M. did contract, covenant and agree to carry and transport the said mails of the United States on and over five of the said post routes, from the said first day of July, in the year of our Lord one thousand eight hundred and seventy-eight, to the thirteenth of June in the year of our Lord one thousand eight hundred and eighty-two, for the number of times and trips each week, and by a schedule for times of departures and arrivals, and for the several sums and amounts of money to be paid by the said United States of America to him, the said J. R. M., each year, as in the said contracts and agreements mentioned and set forth, as follow, to wit:

Recital of contracts as aforesaid.

And the said Postmaster General, by the said Second Assistant Postmaster General, in the name and on behalf of the said United States of America, did then and there make, sign and enter into seven certain contracts and agreements between the said United States of America and one J. M. P., bearing date the said fifteenth day of March, in the year of our Lord one thousand eight hundred and seventy-eight, wherein and whereby the said J. M. P. did contract, covenant and agree to carry and transport the said mails of the United States on and over seven of the said post routes, from the said first day of July in the year of our Lord one thousand eight hundred and seventy-eight, to the thirtieth day of June, in the year of our Lord one thousand eight hundred and eighty-two, for the number of times and trips each week, and by a schedule of times for departures and arrivals, and for the several sums and amounts of money to be paid by the said United States of America to him, the said J. M. P., each year, as in the said contracts and agreements mentioned and set forth, as follow, to wit:

Recital of contracts as aforesaid.

And in each of the said contracts and agreements so made and signed by and between the said United States of America and the said J. W. D. and J. R. M. and J. M. P. as aforesaid, it was further stipulated and agreed, and set forth, that the said "Postmaster General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease or extend the service in accordance with law, he allowing a *pro rata* increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay, on the amount of service dispensed with, and a *pro rata* compensation for the services retained: Provided,

*however, That in case of increased expedition, the contractor may, upon timely notice, relinquish the contract."*

And that thereupon and thereafter, and within the space of sixty days after the making and signing of the said several contracts for carrying the said mails, the said Postmaster General did deliver to the said Auditor of the Treasury for the Post-Office Department a duplicate copy of each of the contracts aforesaid. And that thereupon and thereafter, to wit, on the said twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of the said Court, the said several contracts and agreements so made between the said United States of America and the said J. W. D. and the said J. R. M. and the said J. M. P., as aforesaid, were in full force, effect, existence, and operation; and then and there, to wit, on the said twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of the said Court, the said J. W. D., J. R. M. and J. M. P., together with one S. W. D., and one H. M. V. and one M. C. R., were then and there mutually interested in the said contracts and agreements made between the said United States of America and the said J. W. D. and the said J. R. M. and the said J. M. P. for carrying and transporting the said mails on and over the said post routes numbered 46,182 and 46,247, in the said State of California; and routes numbered 38,113, 38,134, 38,135, 38,140, 38,145, 38,150, 38,152 and 38,156, in the said State of Colorado; and routes numbered 44,140, 44,155 and 44,160, in the said State of Oregon; and route numbered 34,149, in the said State of Nebraska; and routes numbered 40,104 and 40,113, in the said Arizona Territory; and routes numbered 35,015 and 35,051, in the said Dakota Territory; and route numbered 41,119, in the said Utah Territory as aforesaid; and were then and there mutually interested in the money to be paid by the said United States of America to the said J. W. D., J. R. M. and J. M. P., for carrying and transporting the said mails on and over said post routes in accordance with the said contracts and agreements as aforesaid; and the said contracts and agreements were then and there held, owned and used by the said J. W. D., J. R. M. and J. M. P., for the mutual and pecuniary benefit, interest, advantage, gain and profit of them, and the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as aforesaid.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That the said J. W. D., late of the county and district aforesaid, and J. R. M., late of the county and district aforesaid, and J. M. P., late of the county and district aforesaid, and S. W. D., late of the county and district aforesaid, and H. M. V., late of the county and

district aforesaid, otherwise called H. M. V. and M. C. R., late of the county and district aforesaid, otherwise called M. C. R., otherwise called M. C. R. and T. J. B., late of the county and district aforesaid, and W. H. T., late of the county and district aforesaid, together with divers other evil-disposed persons whose names to the grand jurors aforesaid are yet unknown, afterwards, to wit, on the said twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within jurisdiction of the said Court, with force and arms, &c., unlawfully did fraudulently and maliciously combine, confederate, conspire and agree together between and amongst themselves, by means of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., then and there fraudulently to write and sign, and cause and procure to be written and signed, a large number of fraudulent letters and communications, and false and fraudulent petitions and applications to the Postmaster General for additional service and increase of expedition on and upon each of the hereinbefore mentioned, numbered and described post routes as aforesaid, the said petitions and applications then and there falsely to purport to be made and signed by people and inhabitants of the States and Territories residing upon and in the neighborhood of the said post routes, and the said petitions and applications then and there to be signed with fictitious names, and the names of persons not residing upon and in the neighborhood of the said post routes, and the said fraudulent letters and communications, and false and fraudulent petitions and applications then and there to be placed and filed in said office of the Second Assistant Postmaster General, among the papers relating and pertaining to the said several post routes as aforesaid; and by means of said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., then and there fraudulently to make and sign, and cause and procure to be made and signed for the said post routes, false and fraudulent oaths and declarations, and fraudulent written declarations and statements, falsely purporting to be statements made and signed under oath, the said oaths and declarations then and there falsely and fraudulently to state and describe the number of men and animals required to perform the service of carrying the said mails on and over each of the said post routes on and by the schedule of time then existing for carrying the said mails on and over each of the said post routes, and falsely and fraudulently to state a greater number of men and animals than would be necessary and required to carry the said mails on and over each of the said post routes with increased speed on and by a schedule of a less number of hours, and the said false and fraudulent written declarations, oaths and statements, then and there to be placed and filed in the said office of the Second Assistant Postmaster General, among the papers relating and pertaining to each of the said several post routes, as aforesaid; and by means of the said W. H. T. then and there falsely and fraudulently to mark,

write and indorse upon the said fraudulent letters and communications, and false and fraudulent petitions and applications, false and untrue dates, as and for the true date of the filing of the said letters, communications, petitions and applications in the said office of the Second Assistant Postmaster General as aforesaid; and by means of the said W. H. T., then and there to wrap and enclose letters, communications, petitions and applications received and filed in the said office of the Second Assistant Postmaster General, relating and pertaining to carrying and transporting the said mails on and over the said post routes, in envelopes, covers and jackets, as aforesaid, and to write and indorse upon the outside of such envelope, cover and jacket, false and untrue brief statements and descriptions of the subject matter and contents of such papers so to be inclosed as aforesaid, and to write and indorse upon the outside of such envelope, cover and jacket, false and untrue brief statements that the said letters, communications, petitions, and applications so to be inclosed as aforesaid, were then and there in favor of and requests for increased and additional service and increase of expedition of the said mails on and over said post routes as aforesaid; and by means of the said W. H. T., then and there fraudulently to write and prepare fraudulent written orders for allowances to be made to the said J. W. D., J. R. M. and J. M. P., as such contractors, for carrying and transporting the said mails, on and over the said post routes, the said fraudulent written orders then and there to be approved, made and signed by the said T. J. B., and to be filed in the said office of the Second Assistant Postmaster General, among the papers relating and pertaining to each of said post routes, and to be certified to the said Auditor of the Treasury for the Post-Office Department, as aforesaid; and by means of the said T. J. B. then and there fraudulently, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to make, sign and file in the said office of the Second Assistant Postmaster General, written orders for increased and additional service in carrying the said mails on and over the said post routes, and for the increase of the number of trips each week on and over each of the said post routes to a number greater than mentioned and specified in each of said contracts and agreements as aforesaid, he, the said T. J. B., then and there knowing that the said additional service was not lawfully needed and required, and was not necessary and required for the proper and lawful conveyance and transportation of the said mails on and over the said post routes, and was not necessary and required for the just and lawful benefit and advantage of the people and inhabitants of the said States and Territories residing and living upon and in the neighborhood of the said post routes, and was not necessary and required for the just and lawful benefit and advantage of the said United States of America, and to cause and procure the said unlawful and fraudulent orders then and there to be certified to the

said Auditor of the Treasury for the Post-Office Department; and by means of the said T. J. B. then and there fraudulently, and for the benefit, gain, and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to make, sign and file in the said office of the Second Assistant Postmaster General, written orders for large additional compensation and allowances of money and pay to be made to the said J. W. D., J. R. M. and J. M. P., as such contractors as aforesaid, for increased and additional service in carrying the said mails on and over each of the said post routes in accordance with the said orders for the said fraudulently increased and additional service on each of the said post routes, so to be made by the said T. J. B. as aforesaid, and to cause and procure the said unlawful and fraudulent orders to be certified to the said Auditor of the Treasury for the Post-Office Department as aforesaid; and by means of the said T. J. B. and then and there fraudulently, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to make and file, in the said office of the Second Assistant Postmaster General, written orders for the increase of expedition in carrying the said mails on and over the said post routes, and for reducing the time for carrying the said mails from the place of departure to the place of arrival, on each of said post routes, to a schedule and number of hours less than mentioned and specified in each of said contracts and agreements as aforesaid, he, the said T. J. B., then and there well knowing that the said increase in expedition was not lawfully needed and required, and was not necessary and required for the proper and lawful conveyance and transportation of the said mails on and over the said post routes, and was not necessary and required for the just and lawful benefit and advantage of the said people and inhabitants of the said States and Territories residing and living upon and in the neighborhood of the said post routes, and was not necessary and required for the just and lawful benefit and advantage of the said United States of America, and to cause and procure the said unlawful and fraudulent orders to be certified to the said Auditor of the Treasury for the Post-Office Department as aforesaid; and by means of the said T. J. B., then and there fraudulently, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to make and file in the said office of the Second Assistant Postmaster General, written orders for great, excessive, and fraudulent additional compensation and allowances of money and pay to be made to the said J. W. D., J. R. M. and J. M. P., as such contractors as aforesaid, for the increase of expedition in carrying the said mails on and over each of the said post routes in accordance with the said orders for the said fraudulent increase of expedition on each of the said post routes, so to be made by the said T. J. B. as aforesaid, the said allowance of additional compen-

## APPENDIX III.

sation then and there to be made at the rate of and in accordance with the said false and fraudulent oaths and statements of the number of men and animals required for carrying the said mails on and over the said post routes on a schedule of a less number of hours, then and there to be made and signed, and caused and procured to be made and signed by them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., and filed in the said office of the Second Assistant Postmaster General as aforesaid, and to cause and procure the said unlawful and fraudulent orders to be certified to the said Auditor of the Treasury for the Post-Office Department as aforesaid; and by means of the said T. J. B. then and there fraudulently, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to make and file in the said office of the Second Assistant Postmaster General, written orders for extending the service on the said post routes so as to include other and different stations and places on the said post routes than the stations and places mentioned in the said contracts, and for fraudulent allowances of large and excessive additional pay, money and compensation to the said J. W. D., J. R. M. and J. M. P., as such contractors, for the said extension of service, he, the said T. J. B., then and there well knowing that the said extension of service was not lawfully needed and required, and was not necessary and required for the proper and lawful conveyance and transportation of said mails, and was not necessary and required for the just and lawful benefit and advantage of the said United States of America, and to cause and procure the said unlawful and fraudulent orders to be certified to the said Auditor of the Treasury for the Post-Office Department; and by means of the said T. J. B. then and there fraudulently, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to make and file in the said office of the Second Assistant Postmaster General, written orders for the decrease and curtailment of the service on the said post routes, so as to discontinue the service of carrying the said mails to places and stations on the said post routes, and for the fraudulent allowance to the said J. W. D., J. R. M. and J. M. P., as such contractors, as an indemnity, one month's extra pay on the amount of service so to be dispensed with, he, the said T. J. B., then and there well knowing that the said decrease and curtailment of service was not necessary and required for the proper and lawful benefit and advantage of the said United States of America, and to cause and procure the said unlawful and fraudulent orders to be certified to the said Auditor of the Treasury for the Post Office Department; and by means of the said T. J. B. then and there fraudulently, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to make and file in the said office of the Second Assistant Postmaster General, written orders for the allowance

of pay and compensation to the said J. W. D., J. R. M. and J. M. P., as such contractors, without the said J. W. D., J. R. M. and J. M. P. having performed the service of carrying and transporting the said mails on and over the said post-routes for which the said pay and compensation was so to be allowed as aforesaid, and to cause and procure the said unlawful and fraudulent orders to be certified to the said Auditor of the Treasury for the said Post-Office Department; and by means of the said T. J. B. then and there fraudulently, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to refuse to make deductions from the pay of the said J. W. D., J. R. M. and J. M. P., as such contractors, for the failure of them the said J. W. D., J. R. M. and J. M. P. to perform the said service of carrying and transporting the said mails on and over the said post routes in accordance with the said contracts and agreements as aforesaid, and according to the said orders for increased and additional service and increase of expedition so to be made by the said T. J. B. as aforesaid, and then and there fraudulently to fail and refuse to impose fines upon them, the said J. W. D., J. R. M. and J. M. P., for other delinquencies and failures of them the said J. W. D., J. R. M. and J. M. P., as such contractors, in carrying and transporting the said mails on and over the said post routes as aforesaid, and then and there fraudulently to fail and refuse to certify to the said Auditor of the Treasury for the Post-Office Department the said failures and delinquencies of them, the said J. W. D., J. R. M. and J. M. P., as such contractors as aforesaid; and by means of the said T. J. B. then and there unlawfully and fraudulently, and for the benefit, gain and profit of them the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., to make and file in the said office of the Second Assistant Postmaster General, written orders for additional pay and compensation to them, the said J. W. D., J. R. M. and J. M. P., as such contractors, for additional service in carrying the said mails on and over said post routes, the said orders to take effect at date and times before the making and issuing by the said T. J. B., the said orders for such additional service and additional pay and compensation, and to cause and procure the said unlawful and fraudulent orders to be certified to the said Auditor of the Treasury for the Post-Office Department; and by means of fraudulent sub-contracts then and there to be made and signed between the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R. for carrying and transporting the said mails on and over the said post routes, the said sub-contracts to be filed in the said office of the Second Assistant Postmaster General, among the papers relating and pertaining to the said several post routes, and to be certified to the said Auditor of the Treasury for the Post-Office Department; and by means of the said false and fraudulent petitions and applications for additional service and increase of expedition on

and over the said post routes, so to be made, signed and filed in the said office of the said Second Assistant Postmaster General as aforesaid, and the said false and fraudulent oaths and statements of the number of men and animals necessary and required to carry the said mails on and over the said post routes with increased speed and by a schedule of a less number of hours so to be made, signed and filed in the said office of the Second Assistant Postmaster General as aforesaid, and the said false and untrue dates so to be marked upon the said petitions and papers as aforesaid, and the said false and untrue brief statements and descriptions of the contents and subject-matter of the said papers to be enclosed in the said envelopes, covers and jackets, and so to be endorsed and written upon the outside of said envelopes, covers and jackets as aforesaid, thereby fraudulently to deceive the said Postmaster General as such head of the said Post-Office Department and Superintendent of the business of the said Post-Office Department as aforesaid; and by means of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, as aforesaid, then and there, and thereafter during the continuance of the said contracts and sub-contracts, unlawfully and fraudulently to claim, ask, demand, receive, take and acquire unto themselves of and from the said United States of America, the said several large and excessive sums and amounts of money, of the money and property of the said United States of America, so to be by the said T. J. B. unlawfully and fraudulently ordered, allowed and certified to the said Auditor of the Treasury for the Post-Office Department as aforesaid, and unlawfully and fraudulently to be allowed and ordered to be paid by the said United States of America to them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, by reason of the said unlawful and fraudulent orders for additional service and increase of expedition in carrying the said mails on and over the said post routes as aforesaid, and by reason of the said unlawful and fraudulent decrease and curtailment of the service as aforesaid, and by reason of the said unlawful and fraudulent failures to perform the service as aforesaid, and by reason of the said unlawful and fraudulent failures and delinquencies as aforesaid, and by reason of the said unlawful and fraudulent orders and allowances for additional service and additional pay and compensation to take effect at dates and times before the making of the said orders for additional service and the additional pay as aforesaid; and in manner aforesaid unlawfully to defraud the said United States of America; and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America; and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the United States of America of the large and excessive sums of money to be by the said T. J. B. ordered and allowed and to be paid by the said United States of America to the said J.

W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, for the said fraudulent additional service in carrying the said mails on and over the said post routes as aforesaid, of the money and property of the said United States of America as aforesaid; and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America of the large and excessive sums of money to be ordered and allowed by the said T. J. B., and to be paid by the said United States of America to them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, for the said unlawful and fraudulent increase of expedition in carrying and transporting the said mails on and over the said post routes as aforesaid, of the money and property of the said United States of America as aforesaid; and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America of the large and excessive sums of money to be ordered and allowed by the said T. J. B., and to be paid by the said United States of America to them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, for the said unlawful and fraudulent extension of the service in carrying and transporting the said mails on and over the said post routes as aforesaid, of the money and property of the United States aforesaid; and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America of the large and excessive sums of money to be ordered and allowed by the said T. J. B., and to be paid by the said United States of America to them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, for the said unlawful and fraudulent decrease and curtailments of the service in carrying and transporting the said mails on and over the said post routes as aforesaid, of the money and property of the said United States of America as aforesaid; and then and there, and in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America of the large and excessive sums of money unlawfully and fraudulently to be ordered and allowed by the said T. J. B., and to be paid by the said United States of America to them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, after the said unlawful and fraudulent failure to perform the said service in carrying and transporting the said mails on and over the said post routes in accordance with the said contracts and orders as aforesaid, of the money and property of the said United States as aforesaid; and then and there in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America of the large and excessive sums of money unlawfully and fraudulently to be ordered and allowed by the said T. J. B., and to be paid by the said United States of America to them, the said J.

W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, after the said delinquencies in carrying the said mails on and over the said post routes in accordance with the said contracts and orders as aforesaid, of the money and property of the said United States of America as aforesaid; and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America of the large sums of money unlawfully and fraudulently to be ordered and allowed by the said T. J. B., and to be paid by the said United States of America to them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., as such contractors and sub-contractors, for additional service in carrying the said mails on and over the said post routes from the dates and times before the making and issuing of the order for such additional service and additional pay and compensation as aforesaid, of the money and property of the said United States of America as aforesaid; and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the United States of America of a large number of lawful and valuable drafts, warrants and orders for the payment of money, thereafter to be issued out of the said Post Office Department of the United States to them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., for the payment by the postmasters of the said United States of America and by the Treasurer and Assistant Treasurers of the said United States of America and at designated depositories for the money of the said United States of America to them, the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V. and M. C. R., of the said several large and excessive sums and amounts of money so unlawfully and fraudulently to be ordered and allowed by the said T. J. B. as aforesaid, of the lawful warrants, drafts, orders, money and property of the said United States of America as aforesaid; and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America, of the said several large and excessive sums of money (the amounts of the said several sums of money being to the grand jurors aforesaid as yet unknown) of the money and property of the said United States of America as aforesaid, and then and there, in manner aforesaid, and by the means aforesaid, unlawfully to defraud the said United States of America of a large sum of money, to wit, the sum of four hundred and seventy-three thousand one hundred and eighty-three dollars each year during the continuance of the said contracts, of the money and property of the said United States of America, and to the great damage and injury of the United States of America.

And that thereupon and in pursuance of, and to effect the object of their unlawful, fraudulent and malicious combination, confederacy, conspiracy and agreement as aforesaid, the said J. W. D., M. C. R. and S. W. D., afterwards, to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and seventy-

nine, at the county and district aforesaid, and within the jurisdiction of the said Court, did fraudulently file, and cause and procure to be filed in said office of the Second Assistant Postmaster General, among the papers relating and pertaining to the said post route numbered 38,113, a sub-contract and agreement between the said S. W. D. and J. W. D., for the said S. W. D., to carry and convey the said mail on and over the said post route from the said first day of April, in the said year of our Lord one thousand eight hundred and seventy-nine, which said sub-contract was then and there certified to the said Auditor of the Treasury for the Post-Office Department.

And afterwards, to wit, on the eighth day of March, in the year of our Lord one thousand eight hundred and eighty-one, at the county and district aforesaid, and within the jurisdiction of the said Court, the said T. J. B. did fraudulently make, sign and file in the said office of the Second Assistant Postmaster General, a certain order in writing, for increased and additional service in carrying and transporting the said mail on and over the said post route numbered 38,113, and for the allowance of increased pay and compensation to the said contractor and sub-contractor, and for the benefit, profit and gain of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., without the said increase of service then being lawfully needed and required, as he, the said T. J. B. then and there well knew as aforesaid, and with intent thereby to defraud the said United States of America, and which said fraudulent order in writing is as follows, to wit:

Paper set forth in terms.

And did then and there certify said unlawful and fraudulent order to the said Auditor of the Treasury for the Post-Office Department.

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent and malicious combination, confederacy, conspiracy and agreement as aforesaid, afterwards, to wit, on the tenth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of said Court, the said J. M. P., J. R. M., H. M. V. and M. C. R., did fraudulently send, transmit, deliver and cause and procure to be placed and filed in the said office of the Second Assistant Postmaster General, among the papers relating and pertaining to the said post route numbered 34,149, a certain false and fraudulently altered petition, application and paper purporting to be the petition and application of persons residing upon and in the neighborhood of the said post route, to the said Postmaster General, for increased and additional service and reduction of time in carrying the said mails on and over the said post route, which said fraudulently altered paper is as follows, to wit:

**Paper set forth in terms.**

The said petition and paper being then and there fraudulently altered and changed by writing the words "schedule thirteen hours" in the body of said petition, after the said petition had been written and signed with the name aforesaid.

And afterwards, to wit, on the tenth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of the said Court, the said J. M. P., J. R. M., H. M. V. and M. C. R., did fraudulently send, transmit, deliver, and cause and procure to be placed in the said office of the Second Assistant Postmaster General, among the papers relating and pertaining to the said post route numbered 34,149, a certain unlawful, false, willful and corrupt oath, deposition, and statement of the number of men and animals that would be necessary and required to carry the said mails on and over the said post route from Kearney to Loup City three times a week, in the words and figures following, to wit:

**Papers set forth in terms.**

Whereas, in truth and in fact, the number of men and animals necessary to carry the said mails on the said route numbered 34,149, from Kearney to Loup City, three times a week on the then present schedule, was not two men and four animals as aforesaid, and the number necessary to carry the mails on that part of said route on a schedule of thirteen hours three times a week was not six men and fourteen animals, as in the said oath, affidavit and statement falsely specified and set forth as aforesaid.

And afterwards, to wit, on the said tenth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of the said Court, the said T. J. B. did fraudulently make and file, and cause to be made and filed in the said office of the Second Assistant Postmaster General, a certain order in writing for increased and additional service in carrying and transporting the said mails on and over the said post route numbered 34,149, from Kearney to Loup City, and for the expedition and reduction of the time for carrying the said mails from the said Kearney to Loup City, and for the allowance of increased pay and compensation to the said J. M. P., as such contractor as aforesaid, and for the benefit, profit and gain of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., without the said increased service and reduction of time then being lawfully needed and required, as he, the said T. J. B., then and there well knew as aforesaid, and with intent thereby to defraud the said United States of America, which said fraudulent order in writing is as follows, to wit:

Writing set forth.

And did then and there cause the said unlawful and fraudulent order to be certified to the said Auditor of the Treasury for the Post-Office Department.

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent and malicious combination, confederacy, conspiracy and agreement as aforesaid, afterwards, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of the said Court, the said J. W. D., J. R. M. and H. M. V., did fraudulently send, transmit and deliver, and cause and procure to be placed in the said office of the Second Assistant Postmaster General, among the papers relating and pertaining to the said post route numbered 35,015, a certain unlawful, false, willful and corrupt oath, deposition and statement of the number of men and animals that would be necessary and required to carry the said mails on and over the said post route three times a week, in the words and figures following, to wit:

Writing set forth.

Whereas, in truth and in fact, the number of men and animals necessary and required to carry the said mails on the said route on the then present schedule three times a week was not three animals and three men as aforesaid, and with an expedited schedule of ten hours, it would not require five men and ten animals, as in the said oath, affidavit and statement falsely specified and set forth, as aforesaid.

The remainder of the indictment sets forth the means pursued, substantially in the same form as the specific statements quoted, and concludes as follows:

And afterwards, to wit, on the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and district aforesaid, and within the jurisdiction of the said Court, the said J. W. D. and M. C. R., unlawfully and fraudulently did make and present, and cause to be made and presented to the said Auditor of the Treasury for the Post Office Department, a certain other false and fraudulent claim upon and against the Post-Office Department and the Government of the United States of America, for the approval by the said Auditor of the Treasury for the Post-Office Department, and for the payment by the Postmaster General of the United States of America, of the sum of two thousand nine hundred and seventy-six dollars, of the money of the said United States of America, to the said J. W. D., as and for money due and owing to the said J. W. D., as such contractor, by the said United States of America, for carrying and transporting the said

mail on and over the said post route numbered 38,113, for the third quarter, to the thirteenth day of September of the year of our Lord one thousand eight hundred and seventy-nine, by reason of, and by color and means of' the said unlawful and fraudulent orders in writing for the fraudulent allowance of pay and compensation, by the said T. J. B., so unlawfully and fraudulently made and filed in the said office of the Second Assistant Postmaster General, and certified to the said Auditor of the Treasury for the Post-Office Department aforesaid, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., as aforesaid, the said J. W. D. and M. C. R., then and there well knowing that the said claim was false and fraudulent, and with intent thereby to defraud the said United States of America.

And that thereupon, and in further pursuance of, and further to effect the object of their unlawful, fraudulent and malicious combination, confederacy, conspiracy and agreement as aforesaid, afterwards, to wit, on the thirteenth day of June, in the year of our Lord one thousand eight hundred and eighty, at the county and district aforesaid, and within the jurisdiction of the said Court, the said J. W. D., as such contractor as aforesaid, did unlawfully and fraudulently claim, ask and demand, and by color and means of the said several unlawful and fraudulent orders in writing by the said T. J. B., so fraudulently made and filed in the said office of the Second Assistant Postmaster General, and certified to the said Auditor of the Treasury for the Post-Office Department, as aforesaid, did then and there unlawfully and fraudulently take, receive and acquire from the said United States of America, as and for one year's pay and compensation, a large sum of money, to wit, the sum of one hundred and twenty-four thousand five hundred and ninety-one dollars, of the money and property of the said United States of America, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T., as aforesaid, and thereby unlawfully did defraud the said United States of America, as aforesaid.

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent and malicious combination, confederacy, conspiracy and agreement as aforesaid, afterwards, to wit, on the thirtieth day of June, in the year of our Lord one thousand eight hundred and eighty, at the county and district aforesaid, and within the jurisdiction of the said Court, the said J. R. M., as such contractor as aforesaid, did unlawfully and fraudulently claim, ask and demand, and by color and means of the said several unlawful and fraudulent orders in writing by the said T. J. B. so fraudulently made and filed in the said office of the Second Assistant Postmaster General, and certified to the said

Auditor of the Treasury for the Post-Office Department as aforesaid, did then and there unlawfully and fraudulently take, receive and acquire from the said United States of America, as and for one year's pay and compensation, a large sum of money, to wit, the sum of ninety-three thousand and sixty-seven dollars of the money and property of the said United States of America, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., M. C. R., T. J. B. and W. H. T. as aforesaid, and thereby unlawfully did defraud the said United States of America as aforesaid.

And that thereupon and in further pursuance of, and further to effect the object of their said unlawful, fraudulent and malicious combination, confederacy, conspiracy and agreement as aforesaid, afterwards, to wit, on the thirtieth day of June, in the year of our Lord one thousand eight hundred and eighty, at the county and district aforesaid, and within the jurisdiction of the said Court, the said J. M. P., as such contractor as aforesaid, did unlawfully and fraudulently claim, ask and demand, and by color and means of the said several unlawful and fraudulent orders in writing by the said T. J. B. so fraudulently made and filed in the said office of the Second Assistant Postmaster General, and certified to the said Auditor of the Treasury for the Post-Office Department as aforesaid, did then and there unlawfully and fraudulently take, receive and acquire from the said United States of America, as and for one year's pay and compensation, a large sum of money, to wit, the sum of one hundred and eighty-seven thousand four hundred and thirty-eight dollars of the money and property of the said United States of America, and for the benefit, gain and profit of the said J. W. D., J. R. M., J. M. P., S. W. D., H. M. V., H. C. R., T. J. B. and W. H. T. as aforesaid, and thereby unlawfully did defraud the said United States of America as aforesaid, against the form of the statute in such case made and provided, and against the peace and government of the said United States of America.

COPY OF INDICTMENT IN CASE OF BOOT AND SHOEMAKERS OF PHILADELPHIA—DRAWN BY JARED INGERSOLL, PRINTED IN PAMPHLET FORM AT PHILADELPHIA, IN 1806.

1. The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the city of Philadelphia upon their oaths and affirmations, respectively, do present that A, B, C, D, E and F, late of the city of Philadelphia aforesaid, being artificers, workmen and journeymen in the art and occupation of a cordwainer, and not being content to work and labor in that art and occupation, at the usual prices and rates for which they and other artificers, workmen and journeymen, in the same art and occupation were used and accustomed to work and labor; but contriving, and intending unjustly and oppressively, to increase and augment the price and rates usually paid and allowed to them and other artificers, workmen and journeymen, in the said art and occupation, and unjustly to ex-

act and procure great sums of money, for their work and labor, in the said art and occupation, on the first day of November, in the year of our Lord one thousand eight hundred and five, with force and arms did combine, conspire, confederate and unlawfully agree together, at the city of Philadelphia aforesaid, that they, the said A, B, C, D, E and F, or any of them, would not, nor should work and labor, in the said art and occupation, but at certain large prices and rates, which they the said A, B, C, D, E and F, then and there insisted on being paid, for their future work and labor in the said art and occupation, for and upon, and in respect of certain particular sorts of work and labor in the said art and occupation, that is to say: for making fancy boots the sum of five dollars; for making back strap boots the sum of four dollars; for making long boots the sum of three dollars; for making cossacks the sum of three dollars, and for making bootees the sum of three dollars, which, said several rates and prices which were so as aforesaid fixed and insisted on by the said A, B, C, D, E and F, were at the time of their being so fixed and insisted on by them the said A, B, C, D, E and F, more than the several and respective prices and rates, which had been, and which were then used and accustomed to be paid and allowed to them, the said A, B, C, D, E and F, and other artificers, workmen and journeymen employed in the said art and occupation of a cordwainer, for and upon and in respect of the said particulars and respective sorts of work and labor, for and upon and in respect of which the same were so respectively fixed and insisted on by the said A, B, C, D, E and F as aforesaid, to the damage, injury and prejudice of the masters employing them in the said art and occupation of a cordwainer, and of the citizens of the Commonwealth generally, and to the great damage and prejudice of other artificers and journeymen in the said art and occupation of a cordwainer to the evil example of others, and against the peace and dignity of the Commonwealth of Pennsylvania.

2. And the inquest aforesaid upon their oaths and affirmations aforesaid, do further present that the said A, B, C, D, E and F, being artificers and workmen and journeymen, in the said art and occupation of a cordwainer, and not being contented to work and labor in that art and occupation, at the usual prices and rates for which they and other artificers, workmen and journeymen, in the same art and occupation, were used and accustomed to work and labor, but contriving and intending, unjustly and oppressively to increase and augment the prices and rates usually paid and allowed to them and other artificers, workmen and journeymen, in the said art and occupation, and unjustly to exact and procure great sums of money for their work and labor on the said first day of November, one thousand eight hundred and five, with force and arms, at the city of Philadelphia aforesaid, unlawfully did combine, conspire, confederate and agree together, that they, the said A, B, C, D, E and F, or any of them would not, nor should, and

also that they the said A, B, C, D, E and F, and each and every of them should and would endeavor to prevent by threats, menaces and other unlawful means, other artificers, workmen and journeymen in the said art and occupation, but at certain large prices and rates which they the said A, B, C, D, E and F, then and there fixed and insisted on being paid for their future work and labor, in the said art and occupation, that is to say: for making fancy boots the sum of five dollars; for making long boots the sum of three dollars; for making cossacks the sum of three dollars, and for making bootees the sum of three dollars, which said several rates and prices, which were so as last aforesaid fixed and insisted upon by the said A, B, C, D, E and F, were more than the several and respective rates and prices which had been, and which were used and accustomed to be paid and allowed to them the said A, B, C, D, E and F and other artificers, workmen and laborers employed in the said art and occupation of a cordwainer, for and upon and in respect of the said several and respective sorts of labor, for upon and in respect of which the same were so respectively fixed and insisted on by the said A, B, C, D, E and F, as last aforesaid to the great damage, injury and prejudice of the masters employing them in the said art and occupation of a cordwainer—and of the citizens generally of the Commonwealth, and to the great damage and prejudice of others, artificers and journeymen, in the said art and occupation of a cordwainer, to the evil example of others, and against the peace and dignity of the Commonwealth of Pennsylvania.

3. And the inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said A, B, C, D, E and F, being artificers, workmen and journeymen in the said art and occupation of a cordwainer, on the same day and year aforesaid, at the city of Philadelphia aforesaid, unlawfully, perniciously and deceitfully designing and intending to form and unite themselves into a club and combination, and to make and ordain unlawful and arbitrary by-laws, rules and orders amongst themselves, and thereby to govern themselves and other artificers, workmen and journeymen in the art and occupation of a cordwainer, and unlawfully and unjustly to exact great sums of money by means thereof, on the day and year aforesaid, at the city of Philadelphia aforesaid, did unlawfully assemble and meet together, and being so unlawfully assembled and met together, did then and there unjustly and corruptly conspire, combine, confederate and agree together that none of them, the said conspirators, after the said first day of November, one thousand eight hundred and five, would work for any master or person whatever who should employ any artificer, workman or journeyman, in the said art and occupation of a cordwainer, or any person who should thereafter infringe or break any or either of the said unlawful rules, orders or by-laws, and that they would by threats and menaces and other injuries, prevent any other workmen and journeymen from working for such mas-

ter, and the said A, B, C, D, E and F, in pursuance of the said unlawful conspiracy, combination and agreement, refused to work at the usual rates and prices given to artificers, workmen and journeymen in the said art and occupation of a cordwainer, and still do, and each of them doth refuse to work and labour at the usual rates and prices accustomed to be given to them, the said A, B, C, D, E and F, and other artificers, workmen and journeymen in the said art and occupation of a cordwainer, to the great damage and prejudice of other artificers and journeymen in the said art and occupation of a cordwainer, and of the citizens of the Commonwealth generally, and to the great damage and prejudice of other artificers and journeymen in the said art and occupation of a cordwainer, to the evil example of others, and against the dignity and peace of the Commonwealth of Pennsylvania.

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